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BOARD MEETING
STATE OF CALIFORNIA
INTEGRATED WASTE MANAGEMENT BOARD

JOE SERNA, JR., CAL/EPA BUILDING
1001 I STREET
2ND FLOOR
BYRON SHER AUDITORIUM
SACRAMENTO, CALIFORNIA

TUESDAY, AUGUST 19, 2008
9:30 A.M.

TIFFANY C. KRAFT, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12277

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Ms. Margo Reid Brown, Chair

Mr. Wesley Chesbro

Ms. Rosalie Mulé

Ms. Cheryl Peace

Mr. Gary Petersen

STAFF

Mr. Mark Leary, Executive Director

Ms. Julie Nauman, Chief Executive Director

Mr. Elliot Block, Chief Counsel

Ms. Mindy Fox, Assistant Director, Office of Education and
the Environment

Ms. Kristen Garner, Executive Assistant

Mr. Howard Levenson, Deputy Director, Permitting and
Enforcement Division

Ms. Marissa Luna, Staff

Mr. Jon Myers, Assistant Director, Office of Public
Affairs

Mr. Bill Orr, Division Chief, Cleanup, Closure and
Financial Assurance Division

Mr. Ted Rauh, Program Director, Waste Compliance and
Mitigation Program

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Evan Edgar, CRRC

Mr. George Eowan, L&D Landfill

Mr. Chuck Helget, Allied Waste

Mr. Kevin Kondru, Orange County Waste and Recycling

Ms. Rachel Oster, Norcal Waste

Mr. Chris Salomon, Los Angeles County Sanitation

Mr. Larry Sweetser, Rural Counties Environmental Services
Joint Powers Authority

Mr. Chuck White, Waste Management

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1 PROCEEDINGS

2 CHAIRPERSON BROWN: Good morning. Welcome to the
3 August 19th Board meeting for the Integrated Waste
4 Management Board.

5 I'd like to call this meeting to order.

6 Kristen, can you call the roll?

7 EXECUTIVE ASSISTANT GARNER: Chesbro?

8 BOARD MEMBER CHESBRO: Here.

9 EXECUTIVE ASSISTANT GARNER: Mulé?

10 BOARD MEMBER MULÉ: Here.

11 EXECUTIVE ASSISTANT GARNER: Peace?

12 BOARD MEMBER PEACE: Here.

13 EXECUTIVE ASSISTANT GARNER: Petersen?

14 BOARD MEMBER PETERSEN: Here.

15 EXECUTIVE ASSISTANT GARNER: Brown?

16 CHAIRPERSON BROWN: Here.

17 Just as a general reminder, I think you all
18 probably know, cell phones please put them in the vibrate
19 mode.

20 There's speaker slips located in the back of the
21 room. If you intend to speak to any of the agenda items
22 today, please bring them to Kristen.

23 We will be going into closed session at the end
24 of regular business today.

25 And I'd like to ask everybody to stand for the

1 pledge.

2 (Thereupon the Pledge of Allegiance was
3 recited in unison.)

4 CHAIRPERSON BROWN: Thank you.

5 Any members have any ex partes to report?

6 Okay. It appears everybody is up to date.

7 I do have a statement on behalf of the Board I
8 would like to read this morning.

9 As some of you know, yesterday the Board was
10 scheduled to commence an administrative hearing regarding
11 waste tire hauler and facility violation allegations
12 against Tri-C Recycling.

13 The Board postponed the hearing to allow itself
14 time to consider a proposed settlement that it received
15 yesterday morning just prior to the scheduled hearing
16 time.

17 I'm announcing for the record today that the
18 Board has agreed to this proposed settlement for the
19 following reasons:

20 It ensures protection of public health safety and
21 the environment through swift cleanup of the site
22 potential for months of challenges and appeals.

23 It provide punishment through immediate payment
24 of monetary penalties and suspension of the regular
25 hauling activities.

1 And it ensures full compliance by deterring
2 future unlawful activity from occurring through strong
3 surveillance and additional penalties and revocations that
4 could be imposed.

5 The settlement and stipulation contains a number
6 of provisions, including immediate payment of monetary
7 penalty, removal of all tires within the next 120 days
8 from these sites.

9 No other hauling, storing, or processing
10 activities will be allowed during this time period.

11 A 60-day suspension of Tri-C's hauler
12 registration once the tires are removed from the sites.

13 Revocation of the luster tire facility permit.

14 All local and State permits must be obtained
15 before resumption of business operations. If the
16 stipulation is agreed to are not followed, the Board will
17 impose additional penalties.

18 This information will be available on our website
19 following the Board meeting. Should you have any
20 questions, we can refer them to our legal office.

21 With that, I'll go to Mark for your Executive
22 Director's report.

23 EXECUTIVE DIRECTOR LEARY: Thank you, Madam
24 Chair. Good morning. Good morning, members.

25 In the category of I can't resist passing on good

1 news, the extended Board family now includes a gold metal
2 winner. Susan Villa's cousin, Stephanie Brown Trafton,
3 the winner of the women's discus yesterday morning. If
4 you didn't know that already, you now have a gold metal
5 winner in our extended family.

6 On a more serious note, I'd like to report
7 quickly on the Paint Product Stewardship Initiative.
8 We've been an active participant in the Paint Product
9 Stewardship Initiative over the last five years.

10 Speaking of Susan Villa, there she is.

11 I just reported on Stephanie's gold metal as part
12 of my Executive Director's report.

13 In December 2007, the Board signed an MOU that
14 outlined PPSI's golden objectives that involved developing
15 a pilot program in Minnesota by July 1, 2008, followed by
16 the roll out of paint collection systems in Oregon,
17 Washington, and Vermont in 2009, and California in 2010.

18 In the past six months, the paint industry as
19 represented by the National Paint and Coatings
20 Associations decided that legislation is necessary for
21 this project to cover anti-trust issues that may arise
22 from manufacturer-led organizations charging fees on a
23 product as well as to minimize free ridership.

24 NPCA led an effort to pass paint-specific
25 legislation in Minnesota to statutorily establish the

1 pilot program. However, despite full stakeholder support,
2 the Governor vetoed the bill in May for reasons we have
3 been told are unrelated to the bill.

4 NPCA is looking to reintroduce its Minnesota bill
5 in the next legislative session with efforts beginning
6 this winter. Due to the Minnesota veto, the MOU time line
7 appears to be pushed back about one year. As a result,
8 some states have indicated they may pursue an extended
9 producer responsibility framework approach instead of
10 advocating the paint-specific legislation with paint being
11 brought into an EPR system through the framework.

12 The National Paint and Coatings Association has
13 indicated general support for this course of action and
14 the situation is currently very fluid. Staff is closely
15 monitoring the situation. And as the legislative process
16 progresses in Minnesota, we anticipate giving the Board
17 more formal update this winter.

18 At that time, staff will assess the status of the
19 MOU and may suggest the Board consider different courses
20 of action.

21 You, the Board members and the staff, will soon
22 be hearing from the National Paint and Coatings
23 Association as I'm aware they are planning meetings with
24 you all as soon as next week. So you may want to ask them
25 about their progress in a number of these fronts.

1 And with that, Madam Chair, I conclude my report.

2 CHAIRPERSON BROWN: Thank you, Mark.

3 Any public comment? We will move to the consent
4 agenda.

5 Items 1, 2 revised, 3, 4, 10, and 15 are on
6 consent. Does anybody wish to pull any items from the
7 consent calendar? Can I have a motion?

8 BOARD MEMBER MULÉ: Madam Chair, I'd like to move
9 the consent agenda.

10 BOARD MEMBER PEACE: Second.

11 CHAIRPERSON BROWN: It's been moved by Member
12 Mulé and seconded by Member Peace.

13 Kristen, can you call the roll?

14 EXECUTIVE ASSISTANT GARNER: Chesbro?

15 BOARD MEMBER CHESBRO: Aye.

16 EXECUTIVE ASSISTANT GARNER: Mulé?

17 BOARD MEMBER MULÉ: Aye.

18 EXECUTIVE ASSISTANT GARNER: Peace?

19 BOARD MEMBER PEACE: Aye.

20 EXECUTIVE ASSISTANT GARNER: Brown?

21 CHAIRPERSON BROWN: Aye.

22 The consent agenda passes.

23 Items 5 and 11 will be heard on fiscal consent.

24 Items 9 and 8 were heard in Committee only.

25 Item 13 was pulled.

1 And we will hear Items 6, 7, 12 revised, and 14
2 today during the full Board meeting.

3 We'll move first to Permitting and Compliance,
4 and I'll ask Chair Mulé if you have a Committee Chair
5 report.

6 BOARD MEMBER MULÉ: Yes, I do. Thank you, Madam
7 Chair.

8 We did hear three permit items. And I'm very
9 pleased that two of those permit items were for composting
10 facilities. So we were very excited to hear that we will
11 hopefully have two new or expanded composting facilities
12 in the central California area.

13 We did hear a third permit for the Frank Bowerman
14 Landfill expansion which we just approved on the consent
15 agenda.

16 We also heard requests by several manufacturers
17 for exemptions from the minimum postconsumer content
18 requirements for the plastic trash bag law.

19 And then we did also hear -- which we'll be
20 hearing on fiscal consent the new projects for solid waste
21 disposal and codisposal site cleanup.

22 And the full Board will request for rulemaking
23 direction for the long-term postclosure maintenance and
24 corrective action regulations.

25 So with that, I conclude my report. Thank you.

1 CHAIRPERSON BROWN: Thank you.

2 We'll move first to fiscal consent Item 5. Ted.

3 PROGRAM DIRECTOR RAUH: Yes. Good morning, Chair
4 Brown and members.

5 Item 5 is Consideration of New Projects for the
6 Solid Waste Disposal and Codisposal Site Cleanup Program.
7 Staff has completed an evaluation and recommends approval
8 of three new Board-managed projects totaling \$2,035,000
9 pursuant to the solid waste disposal and codisposal
10 cleanup program. The three projects include the Cowell
11 Ranch and John Marsh property, which is a State historic
12 park. It's a former ranch dump in Contra Costa County.
13 It would be a Board-managed cleanup of \$35,000.

14 The second project is the Candlestick Point State
15 recreation area. It's the last rubble pile disposal site
16 of about 14 acres for about \$1.2 million and a Board clean
17 up as well.

18 And the third project is actually three found on
19 the Yurok reservation. They're illegal disposal sites in
20 Humboldt County.

21 Staff recommends all of these projects for your
22 approval and adoption of Resolution Number 2008-134.

23 BOARD MEMBER CHESBRO: Madam Chair, I'll move
24 adoption of the resolution.

25 BOARD MEMBER MULÉ: Second.

1 CHAIRPERSON BROWN: It's been moved by Member
2 Chesbro and seconded by Mulé.

3 Kristen, call the roll.

4 EXECUTIVE ASSISTANT GARNER: Chesbro?

5 BOARD MEMBER CHESBRO: Aye.

6 EXECUTIVE ASSISTANT GARNER: Mulé?

7 BOARD MEMBER MULÉ: Aye.

8 EXECUTIVE ASSISTANT GARNER: Peace?

9 BOARD MEMBER PEACE: Aye.

10 EXECUTIVE ASSISTANT GARNER: Petersen?

11 BOARD MEMBER PETERSEN: Aye.

12 EXECUTIVE ASSISTANT GARNER: Brown?

13 CHAIRPERSON BROWN: Aye.

14 Motion passes.

15 We'll move next to fiscal consent Item 11. Jon
16 Myers.

17 ASSISTANT DIRECTOR MYERS: Good morning, Chair
18 Brown.

19 Board Item 11 is for your consideration of an
20 allocation proposal to be funded from IWMA funds. The
21 proposal is for targeted pilot project to conduct general
22 public outreach to steer consumers away from paper and
23 plastic bags to using reusable bags.

24 Staff is proposing that the Board approve this
25 concept not to exceed the amount of \$69,000 in FY

1 08/09 funds. Staff will return next month in September
2 with the defined Scope of Work to seek proposals for
3 public relations services.

4 We discussed this item at the Committee last
5 week. I would be glad to answer any questions.

6 CHAIRPERSON BROWN: Thank you, Jon.

7 Any questions?

8 BOARD MEMBER MULÉ: Madam Chair, I'd like to move
9 Resolution 2008-141.

10 BOARD MEMBER PETERSEN: I'll second.

11 CHAIRPERSON BROWN: It's been moved by Member
12 Mulé, seconded by Member Petersen.

13 Kristen, can you call the roll?

14 EXECUTIVE ASSISTANT GARNER: Chesbro?

15 BOARD MEMBER CHESBRO: Aye.

16 EXECUTIVE ASSISTANT GARNER: Mulé?

17 BOARD MEMBER MULÉ: Aye.

18 EXECUTIVE ASSISTANT GARNER: Peace?

19 BOARD MEMBER PEACE: Aye.

20 EXECUTIVE ASSISTANT GARNER: Petersen?

21 BOARD MEMBER PETERSEN: Aye.

22 EXECUTIVE ASSISTANT GARNER: Brown?

23 CHAIRPERSON BROWN: Aye.

24 Resolution passes.

25 And before we go to full agenda items, I'll ask

1 Committee Chair Petersen if you have a Committee report
2 for the Markets and Sustainability Committee.

3 BOARD MEMBER PETERSEN: Thank you, Madam Chair,
4 yes. Market Development and Sustainability Committee, we
5 had three items.

6 Number 13 was pulled. And we had a grand
7 discussion on the availability of grants, which got a lot
8 of creative ideas. And the staff did a yeoman's job of
9 putting this all together and getting this back on track
10 to get this funded.

11 And then item 15 is also awarded targeted
12 rubberized asphalt concrete -- anyway. That was it.
13 Three items.

14 CHAIRPERSON BROWN: Thank you, Gary.

15 Okay. We'll move first to full Board Item 6.

16 Mr. Rauh.

17 PROGRAM DIRECTOR RAUH: Thank you, Chair Brown
18 and members.

19 Item 6 is a continuation of -- staff's before you
20 today continuing this discussion on the proposed Phase 2
21 rulemaking efforts necessitated by legislative direction
22 from AB 2296.

23 During July Board discussions, the Board directed
24 staff to move forward with stakeholders and to develop
25 draft regulatory language to address the full list of

1 financial assurance issues. In doing so, staff considered
2 both the eventual existence of a pooled fund and
3 regulatory approaches if there is no pooled fund.

4 The draft regulatory language before you today is
5 consistent with staff's understanding of the Board's
6 direction and contains elements that can be incorporated
7 into a set of regulations that address financial assurance
8 issues of importance to the Board.

9 Stakeholder input has been received on the
10 regulatory language before you today with two recent
11 stakeholder meetings held earlier this month. Staff has
12 crafted language that can flexibly establish appropriate
13 levels of required financial assurance for each operator
14 over time. Language also acknowledges an operator's
15 effective site management, recognizes the value of an
16 operator's effective site monitoring, and adjusts to
17 reflect the risk of divestiture.

18 Staff's presentation today will begin with the
19 scope of the financial assurance issue facing the Board.
20 Along with information regarding current landfill operator
21 financial assurance status, staff will discuss the
22 projected 100 year financial assurance systems cost which
23 we displayed for you before.

24 Based on no current change to the current system,
25 these costs are modeled to be nearly \$5.9 billion, which

1 include nearly 3.2 billion in unassured costs and nearly
2 900 million in projected risk due to divestiture and
3 default.

4 Next staff will discuss to what extent individual
5 operator financial assurance can reduce the State's
6 potential risk from Divestiture and default. Individual
7 operator financial assurance can be modified by regulation
8 to reduce the State's risk to as low as less than 100
9 million over a 100-year period. This level of risk
10 reduction necessitates a high level of individual
11 financial assurance.

12 A more balanced level of assured versus unassured
13 system costs leaves the State facing a model default risk
14 of \$170 million over 100 years. However, the risk from
15 default cannot be totally avoided.

16 Staff's model also predicts default resulting
17 from divestiture. The current regulatory framework may
18 not adequately protect the State from divestiture default
19 after the 30-year postclosure maintenance period is
20 completed. Staff will discuss the importance of providing
21 a regulatory approach to guard against divestiture that
22 can also result in default.

23 Finally, staff will discuss the components of a
24 regulatory approach that can be used in either a situation
25 with the pooled fund or without it.

1 During staff July presentation to the Board, two
2 regulatory alternatives were presented: One approach with
3 the pooled fund and the other without it. Staff will
4 present these options in an expanded format.

5 Staff has worked with stakeholders to fully flesh
6 out these proposals with enabling regulatory language.
7 The regulatory concepts will allow the Board to expand or
8 contract the approaches as it sees fit, and staff can
9 easily adjust the language accordingly.

10 Staff has developed regulatory language that
11 addresses the issues originally listed in Group A and B.
12 Staff has developed language to allow financial assurance
13 to be drawn down or step down or up based on performance.
14 Language that prescribes landfill performance monitoring
15 and other performance criteria has also been drafted.
16 Finally, language that manages default and divestiture has
17 been prepared for your consideration.

18 A pooled fund may be necessary to fully manage
19 the risk of divestiture and default. However, a Board
20 decision regarding a pooled fund not necessarily today
21 given that AB 2296 provides for recommendations of this
22 type that are not really due to the Legislature until
23 middle of next year.

24 Bill Orr continues to lead our staff team and
25 will make today's presentation. Our staff team includes

1 Bernie Vlach, Richard Castle, Garth Adams, Mike Wochnick,
2 Shelly Bromberg, Andy Marino, Rubia Packard, JoeAnne
3 Byrne, and Elizabeth Castañeda.

4 In addition, I want to extend our thanks to Ed
5 Wosika from the State Water Resources Control Board who
6 continues to provide extremely valuable advise through
7 this project.

8 And lastly members of the AB 2296 consulting
9 group that continue to participate actively and provide
10 valuable input.

11 With that, I'd like to turn the mike over to Bill
12 Orr for the staff presentation.

13 (Thereupon an overhead presentation was
14 presented as follows.)

15 DIVISION CHIEF ORR: Thank you, Ted. Good
16 morning, Madam Chair, Board members. For the record, my
17 name is Bill Orr. I'm the Chief of the Cleanup, Closure,
18 and Financial Assurances Division.

19 I'm going to go ahead and start a presentation.
20 We thought we were going to have a Power Point, but we're
21 not connected to the Internet here in this room -- oh,
22 okay. Hopefully this is the final version. So I'll go
23 ahead with my Power Point presentation.

24 --o0o--

25 DIVISION CHIEF ORR: As far as the topics that

1 we're going to cover this morning, we've had a lot of
2 workshops. We've had a number of Board discussions this
3 spring. And what we'd like to do is bring back sort of
4 the best of the best to try to lay out the various issues
5 associated with long-term financial assurances.

6 So we're going to briefly review the requirements
7 of AB 2296. We're going look at the overall
8 infrastructure of the waste industry in California. We're
9 going to review the current status in terms of closed and
10 operating landfills. And associated with that, the types
11 of financial assurances that those landfills have provided
12 with a focus on the cash or build-up mechanisms. We will
13 also look at where landfills are in the postclosure
14 maintenance period. And then review the system costs that
15 represent the exposure to the State.

16 --o0o--

17 DIVISION CHIEF ORR: In regard to the
18 requirements of Assembly Bill 2296, there are two
19 requirements that currently the Board is operating under.
20 First is that by July 1st of 2009, the Board is to adopt a
21 second set of regulations that we're calling the Phase 2
22 regulations, which are the regulations that we've drafted
23 for your discussion today.

24 In addition, the Board has the opportunity to
25 develop recommendations for needed legislation to

1 implement the findings of the study that was adopted last
2 December and the staff work that has been done subsequent
3 to that this spring and summer.

4 --o0o--

5 DIVISION CHIEF ORR: In terms of the overall
6 makeup of the waste industry, if you look at this pie
7 chart, what you'll notice is that over half of the
8 landfills are closed. And specifically there are about --
9 there are a total of 116 public landfills that are -- over
10 half of which have accepted -- ceased accepting waste.
11 There are 66 private landfills, almost two-thirds of which
12 are still operating.

13 --o0o--

14 BOARD MEMBER MULÉ: Excuse me, Bill.

15 On that last slide, it says makeup of waste
16 management industry. That was a little confusing to me.
17 Did you mean to say makeup of landfill operators?

18 DIVISION CHIEF ORR: This is basically the
19 disposal side of things.

20 BOARD MEMBER MULÉ: It's the makeup of the
21 landfill operators, public and private.

22 DIVISION CHIEF ORR: That's correct.

23 BOARD MEMBER MULÉ: Because the slide before that
24 said landfill operators in California. I was a little
25 confused when I read that.

1 DIVISION CHIEF ORR: This is the type of operator
2 and whether they're open or closed. Correct.

3 BOARD MEMBER MULÉ: Thank you.

4 --o0o--

5 DIVISION CHIEF ORR: This one here actually takes
6 a look at what financial assurance mechanisms are
7 currently being utilized by landfill operators for
8 postclosure maintenance.

9 And what you'll notice is by and large the vast
10 majority of the landfills -- and this would be the
11 publicly operated landfills -- rely on the pledge of
12 revenue for postclosure maintenance.

13 If you combine the trust fund and enterprise
14 fund, that represents a significant number of landfills.
15 And I'll look at that here in the next slide.

16 Currently, there's a total of 61 landfill
17 operators that rely on either a trust fund or an
18 enterprise fund for their postclosure maintenance. A
19 total of 19 private operators and a total of 42 public
20 operators rely on that particular mechanism. That will be
21 important further in the discussion when we start looking
22 at the different financial assurance mechanisms, the
23 options that are available to the Board, and how those may
24 effect the viability of an individual operator in that
25 particular instance.

1 --o0o--

2 DIVISION CHIEF ORR: The other thing that we took
3 a look at is where are landfills in the postclosure
4 maintenance period. Currently, there are 100 landfills
5 out of the 282 landfills that are subject to postclosure
6 maintenance requirements in California that are certified
7 closed.

8 And as you can see, we're just getting to the
9 point where the first landfills are getting beyond 15
10 years into the postclosure maintenance period with the
11 largest slug of landfills coming up -- the first slug of
12 landfills coming up that are 12 years into the postclosure
13 maintenance period, which correspond to when the federal
14 Subtitle D requirements were imposed and those landfills
15 were closed just prior to that.

16 --o0o--

17 DIVISION CHIEF ORR: In terms of the status quo,
18 where are we now and why do we need to look at providing
19 additional assurances to make sure that the landfills are
20 maintained over the long term, this represents a pie chart
21 showing over 100-year period the allocation of costs.

22 The color coding that you see here will be used
23 throughout the presentation.

24 Basically, over 100-year period, about \$1.8
25 billion is assured by the landfill operators over 100

1 years. But about \$3.1 billion is unassured. And then in
2 addition to that, there's an estimated default of
3 approximately \$900 million for a combined possible
4 exposure to the State and rate payers of about \$2.7
5 billion over that 100-year period.

6 So that really represents the amount that we're
7 looking at that potentially the State would have to find a
8 way to pay for.

9 --o0o--

10 DIVISION CHIEF ORR: Now, there is a variety of
11 ways to manage the risks that are affiliated with those
12 different levels.

13 One would be through the financial assurance
14 demonstration level carried by the operator.

15 Another way would be by encouraging good
16 performance and therefore minimizing the cost maintenance
17 and corrective action.

18 Another is to manage divestiture through
19 financial assurance requirements so that basically new
20 owners or operators of land after a landfill closes would
21 have the where with all to continue to maintain the
22 landfill.

23 And then finally, to minimize the defaults. And
24 that would be a combination of how to structure the
25 financial assurance mechanisms to minimize how much

1 default would occur. But at the same time, not wanting to
2 have something that's so stringent it would actually
3 precipitate early default. We'll look at that more in a
4 few minutes.

5 --o0o--

6 DIVISION CHIEF ORR: Before I move on, I'd like
7 to quickly review some definitions of terms. These are
8 ones that we've been using throughout this last year and a
9 half. But it's probably a good thing to review them
10 quickly so we're speaking all on the same page.

11 --o0o--

12 DIVISION CHIEF ORR: The first one is financial
13 assurance, which basically is a mechanism that's used to
14 provide assurance that money will be available for
15 postclosure maintenance when the time comes when it's
16 needed. And that would be either for the operator or for
17 the State if it needed to take over and provide that
18 maintenance.

19 --o0o--

20 DIVISION CHIEF ORR: In terms of assured costs,
21 that basically is the amount that's covered by a financial
22 assurance demonstration or mechanism. The unassured cost
23 is the exposure that's not covered by this mechanism, and
24 it includes defaults and divestiture which I'll talk about
25 a little bit more in a few minutes.

1 --o0o--

2 DIVISION CHIEF ORR: Defaults include either
3 temporary inability to pay or permanent inability of an
4 operator to provide the necessary funding to continue to
5 perform postclosure maintenance or corrective action
6 activities.

7 Divestiture is a term we've come to understand
8 through the series of workshops we've had, which is
9 basically where an operator after they cease accepting
10 waste may either sell or transfer a facility to a new
11 entity, whether that entity is a subsidiary corporation or
12 whether it's a totally unrelated company.

13 --o0o--

14 DIVISION CHIEF ORR: Couple of other quick terms.

15 Draw down is basically where there's an annual
16 incremental reduction of the postclosure maintenance
17 financial assurance on a year by year basis.

18 Step down is where there would be every five
19 years a reduction of postclosure maintenance multiplier
20 based on good performance.

21 Or a step up would be based on certain factors an
22 increase in the postclosure maintenance multiplier again
23 during the five-year review.

24 --o0o--

25 DIVISION CHIEF ORR: And then finally -- and this

1 is an issue that's been discussed a lot with stakeholders.
2 The idea of a contingency, which was an additional
3 percentage added to the estimated cost to cover unforeseen
4 expenditures or cost overruns.

5 And just to be clear, a contingency is really not
6 intended to be a substitute for a pooled fund, but
7 depending on which option the Board is interested in, it
8 may make sense to provide a little bit of additional
9 cushion to make sure that the landfill will have
10 sufficient funds to pay for postclosure maintenance.

11 --o0o--

12 DIVISION CHIEF ORR: Now there are different
13 ways, as I mentioned, to manage the risk. It can be done
14 through the demonstration level of the financial assurance
15 mechanism.

16 I think we've seen this one before. So we'll
17 skip this one.

18 --o0o--

19 DIVISION CHIEF ORR: Now how can those risks be
20 managed? Well, they can be managed by looking at the
21 amount of the demonstration, the multiplier, which is the
22 number of times the annual cost estimate is multiplied
23 about by, how long the financial assurance demonstration
24 would last, and also improvements we've made through the
25 regulations for the quality of cost estimates.

1 --o0o--

2 DIVISION CHIEF ORR: Looking at a little bit more
3 detail in terms of the step down. In order to step down
4 under the proposal that staff has developed, it would
5 include that there be no corrective actions, that there be
6 enhanced or proactive monitoring, that any corrective
7 actions that have been paid for are basically meeting the
8 time schedule for repayment. And that there be accurate
9 cost estimates where the costs do not exceed the estimated
10 costs.

11 For a step up, causes for an increase would be if
12 there is a corrective action that's represented by a
13 formal enforcement action or order. Where either they are
14 not participating in the proactive monitoring, enhanced
15 monitoring, or discontinue it later on after they've
16 stepped down, or where they are not paying in accordance
17 with a disbursement from a corrective action mechanism.

18 BOARD MEMBER MULÉ: Bill, I have a question on
19 the step down. So if they met the four criteria, they
20 would be step down.

21 DIVISION CHIEF ORR: They would step down.
22 Correct.

23 BOARD MEMBER MULÉ: Thank you.

24 CHAIRPERSON BROWN: Let me ask you though,
25 Bill -- I guess we can wait until the end. But the step

1 up is new from last month as opposed to just not allowing
2 them to step down. You're proposing a step up if there is
3 a corrective action, because I thought where we were last
4 month was they wouldn't be allowed to step down if they
5 had a corrective action.

6 DIVISION CHIEF ORR: Well, I wasn't actually in
7 the room last month. But it has been part of the staff
8 proposal for several months. It was not specifically
9 discussed last month. So this would be an option for the
10 Board to --

11 CHAIRPERSON BROWN: So you're throwing a new
12 option in at this point to add something? Because if it
13 hasn't been presented to the Board, it's now -- it hasn't
14 been part of the presentation. Because I've never seen
15 step up before.

16 BOARD MEMBER MULÉ: Madam Chair, that's the
17 question that I had at the Committee meeting last week.

18 CHAIRPERSON BROWN: Okay. Well, let's hold that
19 thought for discussion as we move forward on some of this.
20 Thank you.

21 DIVISION CHIEF ORR: Okay.

22 --o0o--

23 DIVISION CHIEF ORR: Now in terms of managing the
24 divestiture risk, the concern is there is a transfer to an
25 unrelated business operation that may not really know what

1 they're getting in for. In fact, we've had a number of
2 instances mentioned by stakeholders where either a private
3 or public entity has Divested in operation and then in
4 some instances has actually come back to that entity.

5 Specifically, they would also potentially lack
6 the experience to successfully maintain the landfills.
7 Landfills may not be their business. And it also may
8 result from a desire to minimize loss or maximize profit
9 for shareholders by publicly held companies after they
10 basically stop selling revenue.

11 These may be partially managed by requiring the
12 new owners to have enhanced financial assurance
13 demonstrations depending on the option that would at least
14 match the previous owner and possibly if they were below
15 15 years go back up to that former level.

16 --o0o--

17 DIVISION CHIEF ORR: Now in terms of looking at
18 the different types of defaults that staff has analyzed
19 over the last several months, there's the standard
20 default, which is basically when the owner or operator of
21 the landfill and the financial assurance institution both
22 simultaneously default. And we've got estimated rates for
23 those activities to occur.

24 We've also identified sort of a special category
25 of what we call the single private landfills. There's 29

1 of those, 22 of which have no other sources of revenue
2 once they stopped accepting waste. And so we anticipate
3 that those landfills will eventually permanently default
4 at some point this time.

5 Of those, 14 of them are already closed. Six of
6 them are currently operating. And two of them have been
7 permitted, but have not yet accepted waste.

8 There are seven others that are not likely to
9 permanently default where the landfill is actually owned
10 by a company that's in some other business, like cement or
11 wood waste or a lumber manufacturing or whatever it
12 happens to be.

13 The second category of special landfills that
14 we've taken a look at are rural public landfills. There
15 are 64 of those that staff believes based on the tax base
16 of those rural areas. And the situations where there may
17 be premature closure or other temporary default
18 situations, we've basically come up with numbers looking
19 at that.

20 And then finally, as I indicated before, the
21 divestitures where during the postclosure maintenance we
22 figured that all private landfills, unless it's managed in
23 another fashion, and possibly a few public landfills may
24 sell the landfill to another entity for development.

25 Calculated costs on that have been using a

1 start-up business default rate of twelve percent.

2 --o0o--

3 DIVISION CHIEF ORR: And in terms of how to
4 manage the risks, the main one is basically to keep the
5 operator engaged as long as possible. That includes
6 basically not creating a financial assurance mechanism
7 that's going to drive a landfill out of the game if they
8 don't have the financial resources to increase the
9 financial assurance that they're already providing. Or on
10 the other hand, lower the level to the point where they
11 don't have a high enough stake to continue to be engaged
12 in the ongoing maintenance of the landfill.

13 As I mentioned before, other ways of managing
14 these defaults would be by improving the cost estimates in
15 the review of those cost estimates, by encouraging and
16 rewarding good postclosure maintenance.

17 However, regardless of what we do, some defaults
18 are going to occur. They're unavoidable. And we've tried
19 to capture those in the chart that we've shown in a couple
20 of previous occasions.

21 --o0o--

22 DIVISION CHIEF ORR: Now in terms of a pooled
23 fund -- and I wanted to point out at this point in time,
24 we've been talking about over the last month or so when we
25 put together the staff proposal there was a piece of

1 legislation that was in the Legislature that doesn't
2 appear to be moving forward this year. So I just wanted
3 to --

4 CHAIRPERSON BROWN: I wouldn't assume that
5 necessarily. There's a lot of legislation that's in a
6 limbo, so we can't say that it is or isn't moving forward
7 until the gavel hits the block on the last day of session.

8 DIVISION CHIEF ORR: That's correct. And my
9 point was that the Board does not need to decide today
10 whether or not they are supportive of a pooled fund. We
11 basically have developed several options that can be
12 pursued with or without legislation in this year's
13 session.

14 In terms of the methods to address defaults in
15 divestitures by using a pooled fund, one of the pros of
16 that is it basically increases the ability to mitigate the
17 costs of defaults and divestitures. In some instances,
18 it's not going to stop them, but it's going to ensure that
19 basically there's money to pay for them.

20 The second thing is that it provides the ability
21 of the Board to provide additional relief to individual
22 landfill operators by allowing them to reduce the amount
23 of their individual financial assurance mechanisms.
24 Essentially, it provides for sharing the risk by all to
25 reduce the cost for each individual landfill.

1 On the con side is that basically the pooled fund
2 would need to be paid for by the rate payers. And as
3 such, is going to transfer those pooled risks to the rate
4 payers. However, that may offset the reductions that can
5 be provided to the individual operators.

6 The other thing is that it may or may not be
7 successfully established in statute, and it does require
8 statute to pursue a pooled fund.

9 --o0o--

10 DIVISION CHIEF ORR: In terms of managing the
11 long-term postclosure maintenance risks, as I indicated,
12 some defaults are going to occur. However, if the Board
13 were to impose a perpetual option providing financial
14 assurance would actually likely precipitate early defaults
15 in particular by the single private landfills. And
16 actually it's likely those defaults would be precipitated
17 by any option the Board would be selecting that would be
18 more than what they've already set aside for their
19 financial assurances.

20 Divestiture leading to default may also be
21 partially controlled by the buyer having to carry a higher
22 level of financial assurance back to a previous level, say
23 15 years.

24 --o0o--

25 DIVISION CHIEF ORR: So quickly in review, the

1 key exposures are from defaults, divestiture, and then the
2 individual level of financial demonstration.

3 --o0o--

4 DIVISION CHIEF ORR: And that leads us into the
5 famous chart here. What this really represents is a
6 compilation of a lot of work staff has done in analyzing
7 the different defaults we've reviewed here today already
8 and various computer modeling runs that have been run at
9 these different funding levels.

10 Some stakeholders have asserted that the 15 times
11 and the five times multipliers are very similar, even
12 without a pooled fund.

13 However, the column really to look at for that
14 particular issue is the red column where there is a 20
15 percent increase between the 15 and five multiplier in
16 terms of the defaults, but there is about a 370 percent
17 increase in the potential divestitures, which would not be
18 covered unless there was a pooled fund or those financial
19 assurance demonstrations are required to increase back up
20 to a 15-year level.

21 --o0o--

22 DIVISION CHIEF ORR: Now this particular slide
23 tries to show the balance that staff has been trying to
24 seek in the assurance options that we presented for the
25 Board's consideration. And what this one shows is

1 basically the green is the assured level and the orange is
2 a combination of the unassured level and the defaults.

3 So if you look at this, basically the 15 X
4 option, whether it's a step down or a draw down,
5 represents what we believe is a good balance between
6 assured costs and unassured costs and at the same time
7 will achieve the objective of keeping the landfills
8 engaged.

9 --o0o--

10 DIVISION CHIEF ORR: As I mentioned before,
11 whether or not there is a pooled fund, what we're going to
12 present this morning is a couple of approaches that the
13 Board can take today or provide us additional direction on
14 pursuing and bringing it back to you next month with or
15 without a pooled fund.

16 So in terms of if we're developing regulations as
17 if there's a pooled fund, there's a couple of ways the
18 Board could go. One would be to have a two-step
19 rulemaking approach which would allow for a further step
20 down or draw down to a five X multiplier at such time that
21 a fund is established in the future. So instead of a
22 sunset, it would almost be a sunup.

23 Another option would be to reduce the financial
24 assurance to below 15 before the fund is established. And
25 that basically would be assuming or betting on to come

1 there will be a pooled fund at some point in time. So you
2 could proceed and give us the direction to proceed with a
3 rulemaking option that would take into account the
4 existence of a pooled fund and just continue.

5 The other option would be to take a look at
6 developing regulations without the pooled fund concept as
7 part of it. And in that instance, staff's recommendation
8 would be to not go below the 15-year multiplier for the
9 reasons that we've outlined in terms of the divestiture
10 issue.

11 --o0o--

12 DIVISION CHIEF ORR: So this brings us to the
13 options that were presented last month in July to the
14 Board.

15 The first option -- we've actually divided last
16 month's Option 1 into two for additional clarity.

17 So Option 1A is what we're calling the 30 times
18 draw down the 15. It basically would mean each year you
19 would be entitled to reduce your financial demonstration
20 by a year's increment until such time that you got down to
21 the 15 year multiplier, and you would continue rolling at
22 that level until the end of postclosure maintenance.

23 Under that option, based on direction from the
24 Board last month, that would include a ten percent
25 postclosure maintenance contingency. That would minimize

1 the exposure to the State, would minimize the divestiture
2 risk, and cover temporary default should they occur at
3 that 15 times level.

4 --o0o--

5 DIVISION CHIEF ORR: Now Option 1B is similar.
6 But to highlight the differences instead of an annual
7 increment step down, this is every five years a landfill
8 operator would be eligible to petition a step down of a
9 five-year increment based on performance. And then they
10 would be at a minimum of 15 times until postclosure
11 maintenance were to end. In some instances, that number
12 may stay at 30. May go to 25, 20, or 15. But at all
13 times, it would be at least 15.

14 With this option, staff would not propose a
15 postclosure maintenance contingency. Would provide
16 similar protections to the State. Would minimize
17 divestiture risk. And would address temporary defaults
18 and further reward good performance by landfills and
19 operators.

20 --o0o--

21 DIVISION CHIEF ORR: And then the second option
22 from last month -- this is basically the option that is in
23 the Attachment 1 today -- is a 30 times draw down to 15,
24 and then a step down to a rolling five based on
25 performance, which would maintain a minimum of a five

1 times multiplier until postclosure maintenance were to
2 end, and not include a postclosure maintenance
3 contingency.

4 The defaults would be a little bit higher. The
5 divestiture, however, without a pooled fund would
6 basically only be partially covered by -- you could
7 basically cover part of that by increasing the coverage
8 level back up to a 15 times multiplier to ensure that the
9 new operator continues the good performance at that
10 landfill.

11 --o0o--

12 DIVISION CHIEF ORR: And so this brings us to the
13 Q&A time in terms of the regulatory approach either with
14 or without a pooled fund.

15 As I mentioned earlier, staff could proceed with
16 any of the three options that we've presented. We also
17 have found as we've discussed the analysis that we have
18 done if there are some other variations on the options
19 that the Board would like for us to proceed with, we
20 could -- a lot of it's very modular. And that with some
21 very simple changes to the regulatory language, we would
22 be prepared to walk you through those or with your
23 direction develop them further for additional
24 consideration.

25 And then finally, you know, after the discussion

1 about the best regulatory approach for the long-term
2 postclosure maintenance, we're also prepared to walk
3 through the other regulatory changes that were previously
4 identified in Groups A, B, and C of the proposal that is
5 before you today.

6 Are there any questions or discussion at this
7 point?

8 CHAIRPERSON BROWN: We do have some speakers.
9 Why don't we do the speakers first.

10 Our first speaker is Kevin Kondru from Orange
11 County Waste and Recycling.

12 MR. KONDRU: Thank you, Madam Chair and members
13 of the Board.

14 CHAIRPERSON BROWN: You're going to have to get
15 closer to the microphone so our court reporter can hear
16 you. Or maybe can you come to this podium over here?
17 It's probably better suited. It's higher. You won't have
18 to lean in. Thank you.

19 MR. KONDRU: Thank you. Once again, thank you,
20 Madam Chair and members of the Board. I'm Kevin Kondru
21 with OC Waste and Recycling.

22 I wanted to commend your Board and your staff for
23 developing draft regulations to address the issues
24 identified in the ICR study.

25 OC Waste and Recycling uses pledge of revenue as

1 a mechanism to demonstrate its financial responsibility
2 for postclosure. So as such, we support your staff's
3 recommendation to begin the rulemaking process under
4 option 1.

5 CHAIRPERSON BROWN: Okay. Is that it?

6 MR. KONDRU: Yeah.

7 CHAIRPERSON BROWN: Thank you.

8 Next speaker, Chris Solomon, Los Angeles County
9 Sanitation.

10 MR. SALOMON: Good morning, Chairwoman Brown,
11 members of the Board. My name is Chris Solomon. I'm with
12 the County Sanitation Districts of Los Angeles County.

13 You may or may not be aware, but the district
14 operates landfills and uses the trust fund as the
15 financial assurance mechanism for those landfills. As
16 such, the regulations as proposed we feel significantly
17 impact this type of mechanism and furthermore, our serious
18 discouragement to the continued use of this type of
19 mechanism.

20 The districts would be strongly opposed to both
21 Options 1A and 1B.

22 Option 2 in terms of the staff's proposal would
23 be more acceptable in our minds in terms of use of this
24 mechanism.

25 We feel that the trust fund -- and I think we've

1 stated this before -- is certainly a mechanism that
2 provides greater assurance for the State as we go forward
3 into the postclosure maintenance period.

4 We would ask that consideration be made with
5 regards to how all the mechanisms are affected by the
6 staff's proposals. In this case, we feel the trust funds
7 are actually unequally affected and affected more than the
8 other mechanisms that are out there and available.

9 The districts are deeply concerned about
10 conditions that must be met by an operator prior to
11 receiving step downs as well. Again, with the trust fund,
12 this basically is withholding money we had otherwise set
13 aside for postclosure maintenance. So if for some reason
14 there was circumstances that prevented our access to those
15 funds, then that poses a serious impact to us.

16 The other issue that we are deeply concerned
17 about is the concept of the step up provision. I think as
18 you have noted earlier that it wasn't presented to your
19 Board during the last meeting, and we would ask that you
20 withdraw any further consideration of those step up
21 provisions at this point in time in the regulatory
22 process.

23 Thanks you, members of the Board.

24 CHAIRPERSON BROWN: Thank you, Mr. Solomon.

25 Our next speaker is Chuck White.

1 MR. WHITE: Thank you, Madam Chair and members of
2 the Board. Chuck White with Waste Management.

3 I was able to e-mail over kind of a summary of
4 our position yesterday to staff and Board members. And
5 I'm prepared to elaborate a little more on that if that is
6 your pleasure.

7 Generally, Waste Management is very supportive of
8 the rulemaking direction that the Board staff is
9 recommending if it is coupled with a pooled fund. As you
10 know, Waste Management is strongly supportive of the
11 development of a pooled fund in the very near future,
12 whether that means this legislative session or a very near
13 term legislative session in the future.

14 We think the Board, as clearly outlined in AB
15 2296, has been directed to adopt regulations and make
16 recommendations to the Legislature on how to address this
17 postclosure care issue.

18 So fundamental bottom line is we're very
19 supportive of Option 2 with a few caveats that we would
20 like some further discussion. It's based on a pooled
21 fund. We think the pooled fund should be established. We
22 hope the Board would make such a recommendation to the
23 Legislature in the near future.

24 If Option 2 proceeds, we would ideally like to
25 have some further opportunity to discuss the specifics of

1 the language associated with Option 2 as I've tried to at
2 least generally outline in the paper that I sent over to
3 you yesterday and just had handed out.

4 As was mentioned by the previous speaker from
5 L.A. Sanitation District, we do have some concerns about
6 the step down provisions, and we think there is some
7 further clarification that would be warranted.

8 One clarification is with respect to the
9 proactive monitoring program. We're not opposed to the
10 concept. We would like some further clarity on what
11 constitutes a proactive monitoring program. And we would
12 like to have it more clearly defined in the regulations or
13 in permits so we know what is being expected of us.

14 As you know, the probe monitoring program is
15 subject to some discussion in the next agenda item related
16 to what is required. And so that's why we would be urging
17 for as much specificity in what constitutes an acceptable
18 proactive monitoring program in regulations and permits so
19 there's no problem down the road.

20 We would hope the step down would be able to
21 occur if there's been no corrective action disbursements.
22 That doesn't mean corrective action hasn't occurred. It
23 means we haven't taken any disbursements from the
24 financial assurance mechanism, and we would like some
25 further clarification on that.

1 The third requirement for a step down is no
2 corrective action orders issued. We would hope that if an
3 order has been issued and is under appeal, step down would
4 not be allowed. But if that appealed order is resolved in
5 favor of the appellant, then there could be an allowed
6 step down at that point in time once that appeal is
7 resolved.

8 And then with respect to the fourth requirement
9 is whether postclosure care activities were at or below
10 projected levels, we would hope that there would be the
11 ability to update your annual postclosure care estimates
12 at any point in time, which we think we've heard the staff
13 say you can.

14 But the overall cost prior to step down at the
15 end of a five-year period is based on the average costs
16 over that five-year period. There may be one year that
17 has exceeded the annual costs, but maybe another year has
18 been below annual costs. And so before you'd allow that
19 five-year step down, you take a look at the total costs
20 over that five-year period and whether or not they
21 exceeded.

22 As you know from the Minnesota data and from
23 data some Waste Management will send to you shortly, there
24 is quite a bit of a variability year to year in
25 postclosure costs, and we would like the ability to

1 normalize that as long as it's not excessive.

2 With respect to stepping down to a minimum five
3 time postclosure care period, we're supportive of that,
4 although we would like to have it coupled with a clear
5 understanding about what is necessary to totally end
6 postclosure care.

7 At the five-time step down levels, we understand
8 that means a five-year rolling financial assurance off
9 into the future forever until postclosure care ends. We
10 would like to have some further discussion and some
11 criteria on what it takes to totally end postclosure care
12 at a closed landfill at some point in time in the future.

13 We're supportive of the staff position on
14 divestitures. We are a little concerned, however, of the
15 step up to 15 if you're in your second 15 year periods.
16 Not all divestitures are the same. You could have a
17 divestiture to a poorly funded new owner or you could have
18 a divestiture to a highly capitalized and funded new owner
19 that may have, in fact, a very strong track record on
20 taking care of postclosure care properties.

21 So we would like to make sure the Board has the
22 ability to either require a step up to 15. Or if the new
23 owner can demonstrate experience, knowledge, and
24 capitalization, that you would be able to continue at the
25 same level of financial assurance as the seller. So some

1 further clarification of that be required.

2 We don't believe a contingency is necessary if
3 there is a pooled fund. The pooled fund as envisioned by
4 2866 would more than cover the exposure to the State many
5 times over we believe. So there is no need for
6 contingencies.

7 The step up provisions, we with like to make sure
8 that if a step up -- if there is a corrective action order
9 for some reason and it's under appeal, the step up does
10 not occur until the appeal is resolved in favor of -- in
11 case the State or the Waste Board that made the initial
12 corrective action order.

13 Then I've provided some additional language in my
14 handout. I won't go into too much more detail. It
15 clarifies the issue related to more precise terminology
16 related to corrective action, more specificity what
17 constitutes a proactive monitoring program, the step down
18 and step up issues.

19 Trade secret protection, you're asking for the
20 first time for a lot of cost information of as-built
21 costs. We would like to make sure it's clear if Waste
22 Management or anybody else submits that information under
23 request that trade secret information confidentiality that
24 that would be able to be maintained.

25 So that's the summary of our comments to you as

1 of yesterday of what we think and we hope the Board takes
2 the proper course of action.

3 Again we believe the pooled fund is fundamental.
4 We think most stakeholders believe it is really a key
5 component. And Waste Management certainly supports it.
6 And we would certainly support moving ahead with maybe a
7 little more discussion of some of these detailed point
8 with your Option 2 so before the rulemaking package goes
9 out for 45 day comment. Thank you very much.

10 CHAIRPERSON BROWN: Thank you, Chuck.

11 Our next speaker is Evan Edgar.

12 MR. EDGAR: Madam Chair, Board members, Evan
13 Edgar on behalf of CRRC.

14 I'm private, single, and active.

15 Anyway, I think the Waste Board staff has stepped
16 up a lot with regards to looking at all options with
17 regards to the closure and postclosure maintenance. It's
18 been a good two-year process where we looked at
19 everything. And CRRC supported looking at all the options
20 and everything possible. And I commend staff for doing
21 that because it was very valuable workshops to get here.

22 CRRC supports Option 1A or Option 1B, because it
23 supports the fact that all landfills need to pay for
24 themselves until it no longer poses a threat to the
25 environment. Mr. White was talking about what is a

1 criteria until the rolling 15 year stops is when it no
2 longer poses a threat to the environment. We would
3 support Option 1A or 1B because it fulfills that tenet.

4 We support the public/private equity among all
5 landfills. That's another key aspect of it. And we
6 support the five-year solid waste permit review process
7 that you always check in with regards to a closure plan
8 with regards to every five years take a look at the
9 closure fund, take a look at the landfill, and support the
10 five-year review process. We've been opposed to the
11 pooled fund for the reasons we stated before.

12 So I'm here today to support Option 1B and A and
13 support all the good work staff has done. Thank you.

14 CHAIRPERSON BROWN: Thank you, Evan.

15 Our next speaker is Rachel Oster.

16 Ms. OSTER: Good morning, Chair Brown, members of
17 the Board. My name is Rachel Oster with Norcal Waste.

18 Thank you for the opportunity to comment on this
19 item. At this point in the rulemaking and with the
20 current options before you today, we cannot support
21 staff's recommendation for two main reasons.

22 One, we feel these proposed recommendation
23 continue to disproportionately effect the operators
24 funding postclosure care with the trust fund. They will
25 absolutely deter operators from using this mechanism,

1 which the ICF study directed by AB 2296 considered the
2 gold standard for financial assurance mechanisms.

3 Two, the inclusion of this step back up provision
4 introduces we feel an additional financial assurance layer
5 that the Board never directed staff to introduce in the
6 group three language.

7 We ask for additional time to vet these issues
8 with staff.

9 Also as supporters of the pooled fund, we feel
10 staff needs more time to develop recommendations for
11 needed legislation to support this rulemaking as directed
12 by AB 2296.

13 Thank you.

14 CHAIRPERSON BROWN: Thank you.

15 And our last speaker I think, Chuck Helget.

16 Mr. HELGET: Madam Chair, members of the Board,
17 Chuck Helget, Allied Waste.

18 Allied Waste opposes adoption of Option 1A and
19 1B. And we support the Option 2 with qualifications. We
20 support a pooled fund and have consistently supported that
21 pooled fund in front of the Board and the Legislature.

22 Several items -- most of the items I'm going to
23 be talking about have already been covered, so I'll gloss
24 over them as quickly as possible the stake of time. But
25 again reiterate our support for a pooled fund and would

1 urge the Board to take a proactive role in making that
2 happen.

3 Secondly, on the postclosure cost estimate
4 adjustments, support the annual adjustment mechanism and
5 the basic 30 year postclosure maintenance period with an
6 annual draw down to 15 years. A rolling 15 years with a
7 performance based step down to five years is an important
8 part of this proposal.

9 Secondly, we are concerned with the step up
10 approach. At this point in time, we're still looking very
11 closely at it. But would certainly want to look more
12 closely at what standards are being used to step somebody
13 back up and how you would be expected to meet those
14 standards and how you could return to a five-year if
15 necessary.

16 We have concerns about the divestiture provision.
17 We think a lot of what staff has done on divestiture is
18 good. But an automatic kickback to 15 years upon a
19 divestiture is certainly problematic from our viewpoint.
20 And there should be -- if a divestiture entails a step
21 back to 15 years, there should be some Board determination
22 that the new owners is not qualified or cannot offer the
23 same types of assurance that were posted by the original
24 owner.

25 Again, I would like to reiterate that we think

1 the package -- the regulatory package as required by AB
2 2296 is necessary. Would suggest that perhaps moving
3 forward with the Group A and B items would be an
4 appropriate first step in moving aggressively forward on
5 regulations and with some delay at least until we make a
6 determination of what is going to happen with the pooled
7 fund, because so much is contingent here upon whether or
8 not the Legislature moves forward aggressively. And again
9 we think the Board taking a proactive role could certainly
10 make a difference there.

11 One concern in Group B, and that is the issue of
12 clarifying non water quality corrective actions. We still
13 think that work needs to be done in this area of more
14 clearly identifying what a non water quality corrective
15 action is in relationship to other types of normal
16 maintenance and expenditures that are made. That issue
17 either could be resolved in the regulations or could be
18 moved into a second tier and certainly additional
19 discussion around that topic.

20 Then I'll close my testimony unless there are any
21 other questions.

22 Again I think we've come a long way on this
23 package. It's been a long couple of years. And there's
24 certainly been a very useful give and take between all
25 stakeholders. And we continue to look forward to working

1 with the Board and Board staff on further perfecting these
2 regulations. Thank you.

3 CHAIRPERSON BROWN: Thank you, Chuck.

4 Okay. Questions, staff, et al?

5 Cheryl, do you want to start down there?

6 BOARD MEMBER PEACE: So will we know by next
7 month whether there's going to be a pooled fund at this
8 legislative session? When does the Governor have to have
9 all the bills signed?

10 CHAIRPERSON BROWN: Thirty days after the close
11 of session, which I believe is August 31st. So end of
12 September. But we'll know whether a bill passes through
13 the Legislature by the end of August. So we'll at least
14 have one hurdle crossed or at least part of the discussion
15 will be had at that time.

16 If no bill passes, we know that we don't have
17 that as an option. But we can recommend and pursue
18 legislation in the next session. If the Board decides
19 that's the way we want to go is with a pooled fund, then,
20 you know, we can pursue legislation or at least a
21 legislative proposal to address that.

22 BOARD MEMBER PEACE: There's nothing ever certain
23 when it comes to legislation. So if it doesn't happen in
24 the next month, we should probably proceed on the
25 assumption that there's not a pooled fund, even though we

1 can still make a recommendation to the Legislature for a
2 pooled fund.

3 CHAIRPERSON BROWN: Right. Well, I think 2296
4 asked us to address regulations and make recommendations
5 to the Legislature. So if that's what we decide is the
6 most prudent course of action IS TO pursue a pooled fund,
7 then I think that we are meeting the requirements of 2296,
8 which is to develop the regulations to increase
9 postclosure maintenance and make recommendations to the
10 Legislature.

11 So if the Board feels that's the most prudent way
12 to go, I don't think we need to view ourselves as betting
13 on something that may or may not happen, because we
14 fulfilled our obligations under 2296, which is to make
15 recommendations on further statutory requirements through
16 our recommendation to the Legislature.

17 BOARD MEMBER PEACE: But since we do have so many
18 landfills that are already twelve years into postclosure,
19 I don't think we can just assume we're going to get a
20 pooled fund. So it seems like we should wait until next
21 month and see do we have one or don't have one.

22 And then if we don't, we should probably go ahead
23 with Option 1A or B and still make a recommendation to the
24 Legislature that we have a pooled fund.

25 It seems to me we can always lower down things

1 and then to increase what we're -- if we go low, it's
2 going to be hard to increase the assurances than if we
3 start with 1A or 1B and if we get a pooled fund in the
4 future to ratchet down.

5 I mean, does that make sense to anybody but me?
6 It seems like we should start with the highest assurance
7 and if we get a pooled fund we can ratchet down. I don't
8 think we should start with the lowest and just assume and
9 hope we get a pooled fund.

10 BOARD MEMBER CHESBRO: I guess I can't totally
11 agree -- we should tell the Legislature what we think.
12 But I don't think that -- it's sort of two part process
13 here of trying to get the legislation necessary to back
14 what we think are the best options. But on the other
15 hand, in the absence of that action, we still have a
16 responsibility to try to figure out what's the best system
17 in that absence. So it needs to be sort of a two part
18 strategy and take into account with or without.

19 CHAIRPERSON BROWN: Well, one of the options
20 presented by staff is the two-part rulemaking process. So
21 I think we should proceed and just direct staff as to what
22 we need to do. And then in the two-part process, we can
23 go back and address any issues that we feel need to be
24 re-dressed in the second part of the rulemaking or during
25 the comment period.

1 BOARD MEMBER PEACE: I guess there's some -- I
2 guess we should have some discussion on the step up,
3 because apparently some of us think it wasn't brought up
4 before.

5 I know I have heard it before. I can't tell if
6 you it was a workshop or Committee meeting or the Board
7 meeting. But I have heard that.

8 I guess, to me, it's not whether I heard it
9 before or whether it's been presented before, but my
10 question is why staff thinks it's an important option and
11 how it will help protect the State and how would that
12 work? I mean, that was thrown in. Why did you think it
13 was important we have the step up?

14 DIVISION CHIEF ORR: As far as the step up, the
15 whole notion behind it is that postclosure maintenance is
16 an ongoing commitment. It's a little bit like road
17 maintenance. That just because a road is maintained well
18 at a particular time doesn't mean that it's going to
19 continue to be maintained at that same level.

20 And so I think the intention of the step up was
21 to provide that continuing incentive to properly maintain
22 the landfill. And that if the monitoring of the landfill
23 continued to optimize performance, that it continued not
24 to have corrective actions, that it would be eligible to
25 stay at that reduced level.

1 But if there was a change in management, a change
2 in financial conditions, whatever it may be, and all of a
3 sudden the landfill was not being maintained and those
4 triggers that were identified in the regulations that were
5 proposed happened, then the only way to really address
6 that and maintain the landfill would be to step up at that
7 point.

8 So I think that was the impetus was to encourage
9 and incentivize the ongoing maintenance of the landfill
10 rather than say once you simply get down to the lowest
11 level, you get to stay there until postclosure maintenance
12 ends.

13 CHAIRPERSON BROWN: But the way it's always been
14 proposed and discussed heretofore today when it's been put
15 on the slide or Monday when I wasn't here -- and I
16 apologize -- is that the step down is a privilege for
17 exceeding and for achieving certain requirements. So, you
18 know, you don't just get it for maintaining a certain
19 level.

20 I mean, the way it's been presented, the step
21 down option would be for going above and beyond and for
22 maintaining. And the incentive is there to not have any
23 corrective action, to not have any issues. You're sort
24 of -- you flipped it a little bit in your description of
25 what a step up is and made that the hammer instead of the

1 carrot. And we've always been talking about the carrot
2 incentivizing to go above and beyond.

3 DIVISION CHIEF ORR: So the question is if at
4 some point in the future.

5 CHAIRPERSON BROWN: Let me also say you mentioned
6 that a change in management could trigger a step up, which
7 I think is way beyond -- way, way beyond our scope of
8 authority. I mean, we cannot tell them who can and cannot
9 manage their thing. And if you're making it
10 performance-based, then it's performance-based, not a
11 manager. So I would fight that one.

12 DIVISION CHIEF ORR: Real quick on that, that was
13 just an illustration. The performance would not be based
14 on a change in management. It may reflect a change in
15 management and a different project. So it's basically
16 this would be a performance standard regardless of what --

17 CHAIRPERSON BROWN: Well, you have to take change
18 in management completely out of your dialogue, because
19 that is beyond our scope. You can make it purely
20 performance based, corrective action, default, or anything
21 like that. It cannot be beyond our scope of authority.

22 DIVISION CHIEF ORR: As the criteria are
23 proposed, it would not be for a change in management. It
24 would be performance.

25 The question is if at such time, like, for

1 example, if you had a good driver policy for insurance,
2 you get a discount. If you meet that level and at some
3 point you're in an accident, your insurance level goes up.
4 That's the sort of the same kind of thing that we're
5 looking at.

6 So really the question that we propose to the
7 Board is once you get down to that carrot level, is there
8 any reason to ever go back up again? And staff basically
9 has suggested that there would be if the performance of
10 the landfill at some future point does no longer meet
11 those criteria that we've outlined.

12 In regard to this as being a new issue, when we
13 had our workshop where we first looked at our options, it
14 was a staff workshop. And Bernie had developed a variety
15 of slides to illustrate stepping down and stepping up. It
16 just unfortunately was an oversight in last month's Board
17 presentation as we've tried to be concise in making the
18 materials for the Board.

19 But, you know, it's purely up to the Board in
20 regard to the step up. But that's the intention is to
21 continue that incentive to work with performance.

22 BOARD MEMBER PEACE: I was just going to say that
23 makes perfect sense to me. That's kind of what we do with
24 our children. That's what I did with my boys. They had
25 to pay their own car insurance. And that was a big

1 incentive for them to get the good grades to get the low
2 car insurance.

3 But it was a big incentive for them not to run
4 red lights and not have accidents and be more careful when
5 they were driving so their insurance wouldn't go back up.

6 So from that perspective, I think it makes sense
7 to me.

8 BOARD MEMBER PETERSEN: Madam Chair.

9 CHAIRPERSON BROWN: Yes, Gary.

10 BOARD MEMBER PETERSEN: We've heard a couple
11 comments today about the trust funds. Can you help me
12 with understanding what impacts -- did you guys analyze
13 this to find out what impacts these would have on a pooled
14 fund or how it's going to be structured with the trusts?

15 DIVISION CHIEF ORR: We have looked at that.
16 Based on the numbers and the distribution of the operators
17 that rely on the different mechanisms, I have the one pie
18 chart that showed how many people are using trust funds
19 and how many are using enterprise funds, which are the
20 build up mechanisms. And it may effect which mechanisms
21 the operator select.

22 However, as far as the regulations are concerned,
23 all of those options, all of the financial mechanisms are
24 equal in the eyes of the State. Basically all of the
25 mechanisms that are provided under the regulations are

1 acceptable under the regulations.

2 And while a trust fund has certain benefits in
3 terms of having cash in hand, it's really the fully funded
4 trust fund that represents more of the gold standard. But
5 a letter of credit or a bond is equally good and can be
6 utilized in the same fashion.

7 Similarly, we know of a number of operators,
8 especially on the public side, that utilize the pledge of
9 revenue that's backed up by a trust or an enterprise fund
10 at the local level. So there are a variety of ways that
11 landfill operators can select their mechanisms to meet the
12 State requirements.

13 Another way would be if a landfill operator was
14 to use a trust fund, as they drew that trust fund down,
15 they could substitute a pledge of revenue for the amount
16 they reduced, and they would still maintain the
17 flexibility over the use of their principle.

18 So both through the selection and the use of the
19 financial assurance mechanisms, there are a variety of
20 ways that the landfill operators can maintain the level of
21 flexibility that they've expressed here today.

22 BOARD MEMBER PETERSEN: So what was said here
23 today by some of the stakeholders is there's compatibility
24 here is what you're telling me, and they're say, no,
25 there's no compatibility.

1 DIVISION CHIEF ORR: We've had individual
2 conversations on several on them on some options to look
3 into. They've indicated they're looking into those
4 options. In many instances, there are flexibilities they
5 could pursue that they haven't chosen to yet.

6 BOARD MEMBER PETERSEN: So this is still ongoing
7 conversation?

8 DIVISION CHIEF ORR: Yeah. It's an
9 implementation matter.

10 BOARD MEMBER PETERSEN: The other thing I wanted
11 to ask you, catastrophic instances of earthquake, what
12 happens with the funds? We have a major, major
13 earthquake. One of the landfills just totally slides into
14 the Pacific Ocean. What do we do? And how is that
15 covered?

16 DIVISION CHIEF ORR: Well, under the staff
17 proposal, that's currently on the table. That would
18 clearly be a corrective action under the slope failure
19 category. And it would be under the piggy-backing on the
20 Water Board be enable for funding using the non water
21 corrective action.

22 Now if the whole landfill slides into the ocean,
23 it may easily exceed the amount of that reasonably
24 foreseeable corrective action. And in the instance where
25 it exceeded it, it would be the responsibility of the land

1 owner for the land owner/operator first and foremost to
2 pay for the corrective action. If there was a pooled fund
3 that would cover that, that may be available to offset
4 some of those costs.

5 BOARD MEMBER PETERSEN: Thank you.

6 BOARD MEMBER PEACE: I just have a question on
7 the 1A and 1B. It seems like people that are in favor of
8 those say 1A or B. I don't know if they think there's all
9 that much difference.

10 But I'm trying to figure this out. So in 1A
11 that's an automatic draw down.

12 DIVISION CHIEF ORR: That's correct.

13 BOARD MEMBER PEACE: So in 1B the Board then
14 reviews -- does the review and then allows the step down.
15 So really in 1B, we have a little more scrutiny over the
16 landfills and would be able to identify potential problems
17 like sooner rather than later.

18 DIVISION CHIEF ORR: In regard to both Options 1A
19 and 1B, the regulations provide for a five-year
20 postclosure maintenance review under either option.

21 But in Option 1B, that's where the proactive
22 enhanced or the term waste management has utilized
23 optimized monitoring program would come in. And so it
24 would basically give us a better idea of the trends of
25 what's occurring at the landfill rather than just looking

1 at the compliance based on individual reports. So it may
2 not give an early warning sign, but it would give you an
3 idea over time as to what the landfill's doing and when it
4 may be actually possible to release it from postclosure
5 maintenance.

6 So we would be scrutinizing the landfills equally
7 in either case in terms of the five-year review. But with
8 the optimized or enhanced monitoring, we would be looking
9 at the ongoing performance trends of the landfill.

10 CHAIRPERSON BROWN: Rosalie.

11 BOARD MEMBER MULÉ: Thank you, Madam Chair.

12 I guess I'm a little confused here.

13 Last month, I thought that via our discussion at
14 the Committee and the Board meeting that you, Madam Chair,
15 had provided direction to our staff to proceed with the
16 then Option 2. And so I'm just a little confused as to
17 why -- I feel like we're re-visiting this issue once
18 again.

19 And I, like you, do not recall discussing step up
20 at any of the Committee meetings or the Board meeting. So
21 I guess I'm just confused as to why we're even having this
22 discussion, because we did provide you with direction last
23 month. And I don't know what has changed between then and
24 now that you cannot proceed with the direction that we
25 gave you last month. So maybe you can help clarify that

1 for me.

2 DIVISION CHIEF ORR: Well --

3 PROGRAM DIRECTOR RAUH: Well, I think you'll have
4 to take responsibility for the staff's presentation here.

5 I think that we have had -- and perhaps staff, as
6 Bill indicated earlier, we mixed up the communications we
7 were having with the stakeholders and the communication we
8 thought we had with the Board with respect to Option 2.

9 We at that time had been thinking about the
10 conversation we just had here about if you incentivize
11 people to go down through this step down approach that
12 there had to be something for those who went down and then
13 just stopped doing the very things that had given them the
14 opportunity to go down. In other words, they had
15 corrective action or they stopped the enhanced monitoring.

16 And we clearly did not communicate that
17 effectively to you at the last Board meeting.

18 We carried on with that same conversation with
19 stakeholders in the two subsequent meetings, and we
20 brought it to you today.

21 So it really is clearly my oversight with respect
22 to continuing this conversation absent specific direction
23 from you. That's basically all I can say.

24 CHAIRPERSON BROWN: Well, I think that there's
25 not enough clarity around what a step up would be

1 triggered by. I mean, I think that if you've raised the
2 issue, you've only sort of got the balloon halfway in the
3 air, because there's not enough clarity as to what types
4 of things would trigger a step up or what types of things.

5 I mean, is it a complete mirror on what your
6 performance is to step you down, if those are the exact
7 same things that would step you up. Because I think
8 clearly the stakeholders don't understand either, because
9 we've had some question on clarity on that.

10 There's also the divestiture issue that it would
11 be an automatic back to 15 years, and I haven't heard that
12 before. I think there needs to be more clarification
13 around that as opposed to whether -- my recollection on
14 our previous conversations was when there is a
15 divestiture, they have to show financial assurance or
16 means in order to participate and to purchase the
17 landfill. It wasn't an automatic up to a certain amount.
18 So I think that needs to be clarified, because there's not
19 enough clarity around that issue as well.

20 So I think that at this point, you know, unless I
21 hear -- I think we gave clear direction to continue with
22 Option 2. I know there is some question as to whether
23 there will be a pooled fund. I think we need to take the
24 two track that you presented and that has been dialogued
25 before. Once we know whether there is a pool fund, we can

1 go back and address and add that to our rule making or
2 make the recommendation to continue with what we've got.

3 As Cheryl raised, we don't know what the
4 situation is with the pooled fund, and we won't know until
5 at least the end of August.

6 BOARD MEMBER PEACE: With that being said Madam
7 Chair, I'm just wondering, would it save staff time, a lot
8 of work and stuff if we hold off until next month to make
9 the decision if we know we have a pooled fund? Because if
10 we know we have a pooled fund, we know we need to go this
11 way. And if we don't have a pooled fund, we need to go --

12 CHAIRPERSON BROWN: I think they previously told
13 us last month that it wouldn't create any additional
14 workload in order to start the rulemaking direction with
15 the assumption that we would have a pooled fund. Just
16 going back on recollection of what your --

17 PROGRAM DIRECTOR RAUH: That's correct, Madam
18 Chair. Based on the fact we've developed the language, we
19 have it. So it's not a problem.

20 CHAIRPERSON BROWN: Okay.

21 BOARD MEMBER PEACE: When you mention there
22 wasn't clarity in the step up, and both the Chucks brought
23 up things about wanting further clarification on a number
24 of issues. I mean, aren't those all the kind of things
25 that we would flush out during the rulemaking process?

1 Would they necessarily be flushed out before we started
2 the rulemaking process?

3 PROGRAM DIRECTOR RAUH: Well, at this point, we
4 have received one set of written comments from Waste
5 Management. And those were summarized before you today.

6 Clearly, there are a number of points raised
7 there that we think are either are dealt with or could
8 easily be dealt with with a word change here and there.
9 There may be some in which the staff disagrees.

10 But I think that there's been a lot of effort so
11 far put into the regulatory language that's been developed
12 by stakeholders. So I think we're very close. It
13 really -- what really is necessary is for staff to come
14 away from this meeting with a clear guidance and not
15 fumble it this time. That's what's needed.

16 CHAIRPERSON BROWN: And I think they indicated
17 that, that, you know, we are close. It is a little bit of
18 clarification here and there.

19 And I think it does make it easier for staff if
20 we do that clarification before sending the regs over to
21 the Office of Administrative Law and then go through a
22 45-day comment period in order for them to participate or
23 to clarify. Because then that's just going to move the
24 regs further and further back if we wait, submit, and then
25 go through clarification with stakeholders.

1 So I'd like staff to see if we can clarify the
2 language before we send the regs to OAL so that we don't
3 further delay the process of approval of the regs.

4 Mark.

5 EXECUTIVE DIRECTOR LEARY: If I understand you
6 correctly, Madam Chair, that would then suggest we would
7 not start the 45-day comment period until we reported back
8 to you about the clarifications next month.

9 BOARD MEMBER PEACE: Actually, that makes sense
10 to me, because by then we would know if we have a pooled
11 fund or not.

12 CHAIRPERSON BROWN: No. I don't think so. I
13 think we can proceed -- from what I've heard from
14 stakeholders this morning and from Ted, there is some
15 clarification language that just needs to be made in this
16 set of regs and then they can be sent to the Office of
17 Administrative Law.

18 I don't think it needs to come back to us again,
19 because we've already had it last month and this month.
20 So with some clarification, I think we're ready to move
21 forward.

22 EXECUTIVE DIRECTOR LEARY: Okay. So I like the
23 way Bill phrased it earlier about this being a modular
24 approach. We have various components and modules to plug
25 in.

1 For the sake of bringing this to a close, I think
2 the modules currently contained under Option 2 in the
3 slide presentation are what the Board is directing us
4 today to go forward with it. Because it doesn't include
5 the step up provision on that slide and description of
6 step two.

7 In addition, you've requested clarification about
8 the step up process, but that's a module we are going to
9 set aside for the purposes of moving forward in this
10 45-day comment period, if I understand the Board direction
11 correctly. We'll set it aside. We'll maybe work on it
12 further. Maybe come back to you with some subsequent
13 conversation with the clarification you've asked for. But
14 this process separate from that module will go forward on
15 the 45-day. And if we choose to plug it in at some point
16 in the future or if it becomes a rulemaking separate unto
17 itself, separate apart from compliance of 2296, so be it.

18 What I've heard from you today is that module is
19 not critical to this thing going forward for the purposes
20 of moving to the 45-day comment period.

21 CHAIRPERSON BROWN: Yes.

22 EXECUTIVE DIRECTOR LEARY: I'm tempted to
23 clarify.

24 CHAIRPERSON BROWN: Was that not a definitive
25 enough yes?

1 But the other issue is the divestiture. You
2 know, automatically bumping it up to the 15 year without
3 any sort of performance or discussion of financial
4 mechanisms or what the buyer would be capable of doing. I
5 don't recall that 15 year automatic step up in the
6 discussion. It was more a financial basis for who the
7 buyer would be and how their capitalized to assure they
8 have proper capitalization. It wasn't to exactly. I
9 think that needs to be taken out, discussed further, and
10 would be put in the Group C with the step up issue that
11 needs clarification.

12 EXECUTIVE DIRECTOR LEARY: Understood.

13 CHAIRPERSON BROWN: Everybody okay with that?

14 BOARD MEMBER PEACE: I don't understand what's
15 going on. Why would we move ahead with Option 2 assuming
16 there would be a pooled fund when we don't know yet?

17 CHAIRPERSON BROWN: That was the direction we
18 gave staff, because there's legislation pending that
19 creates the pooled fund.

20 BOARD MEMBER PEACE: What happens if the pooled
21 fund -- say it doesn't pass, then what's going to happen?

22 CHAIRPERSON BROWN: Then we can come back and
23 they can look at our rulemaking, and we can address an
24 issue or make a recommendation and pursue legislation to
25 create a pooled fund.

1 BOARD MEMBER PEACE: So we'll have the option?
2 Because without that, we should be moving forward without
3 a pooled fund, because we don't have one. And you never
4 know -- nothing is certain with legislation. So we should
5 move forward assuming there isn't one. And then if we do
6 get one, come back and address it.

7 BOARD MEMBER MULÉ: Madam Chair, I think --

8 CHAIRPERSON BROWN: Disagree.

9 BOARD MEMBER MULÉ: I think last month we did ask
10 staff to move forward on those parallel tracks.

11 BOARD MEMBER PEACE: But I thought we said we
12 would come back in September if it didn't pass and then we
13 would decide --

14 CHAIRPERSON BROWN: We can come back subsequent
15 to this session, not necessarily in September. But if a
16 pooled fund is not created, we can come back subsequent to
17 that and revise the rulemaking direction in order to
18 address the issues of financial assurance if we feel that
19 the pooled fund will not be created.

20 CHAIRPERSON BROWN: So we're going on a parallel
21 track as opposed to just hanging back and waiting. We're
22 not waiting to create the financial assurance that 2296
23 requires.

24 We're doing it with the direction that a pooled
25 fund option is what this Board had given direction for

1 last month. If a pooled fund is not created by statute in
2 the Legislature this session, then we can come back and we
3 can redress the issue.

4 BOARD MEMBER PEACE: Since we have to have
5 regulations adopted by next July '09, we will come back --
6 if we don't have a pooled fund this session, then we'll
7 come back and discuss whether we want --

8 CHAIRPERSON BROWN: But that's why we're moving
9 forward now on the dual tracks is because these
10 regulations have to be adopted by July of '09. So this is
11 our time line to get those issues addressed. And if there
12 is not a pooled fund, we will address that issue once that
13 determination has been made.

14 BOARD MEMBER PEACE: Okay. I just want to make
15 sure if there isn't a pooled fund this session that we can
16 come back and discuss whether we want --

17 CHAIRPERSON BROWN: It may not be in September.
18 I'm just not making a promise it's in September.

19 BOARD MEMBER PEACE: Because I don't think we
20 would want to submit -- adopt regulations assuming that
21 sometime in the future we have a pooled fund.

22 CHAIRPERSON BROWN: Okay. Do you have clear
23 direction?

24 PROGRAM DIRECTOR RAUH: I have just two questions
25 to make sure I'm clear.

1 First, it has to do with the taking out the
2 divestiture. What the regs would say at this point would
3 be that whatever level of financial assurance the seller
4 had at the time would basically go to the new purchaser.

5 CHAIRPERSON BROWN: The requirement for the
6 buyer.

7 PROGRAM DIRECTOR RAUH: And then the second
8 question is that we also had discussed with you at earlier
9 meetings the A and B issues and basically felt that we
10 were moving in a correct direction with those. So we
11 would assume that we also put those into this regulatory
12 package.

13 CHAIRPERSON BROWN: Not having them in front of
14 me and assuming that I directed you that way exactly last
15 month, I am going to say yes.

16 PROGRAM DIRECTOR RAUH: Thank you.

17 BOARD MEMBER MULÉ: Madam Chair, I believe that's
18 what did you direct.

19 CHAIRPERSON BROWN: I believe I did. I'm
20 wondering what I directed anymore, because I have to
21 re-visit it every month.

22 I'd like to take a five-minute break, and we will
23 reconvene and take up Item 7.

24 (Thereupon a recess was taken.)

25 CHAIRPERSON BROWN: Kristen, can you call the

1 roll?

2 EXECUTIVE ASSISTANT GARNER: Chesbro?

3 Mulé?

4 BOARD MEMBER MULÉ: Here.

5 EXECUTIVE ASSISTANT GARNER: Peace?

6 BOARD MEMBER PEACE: Here.

7 EXECUTIVE ASSISTANT GARNER: Petersen?

8 BOARD MEMBER PETERSEN: Here.

9 EXECUTIVE ASSISTANT GARNER: Brown?

10 CHAIRPERSON BROWN: Here.

11 Okay. We'll hold the roll. I know Member

12 Chesbro will be here in just a minute. And we'll go ahead

13 and reconvene.

14 Any members have any ex partes to report?

15 Then we'll go ahead and move to Agenda Item 7,

16 another rule making direction. Ted.

17 PROGRAM DIRECTOR RAUH: Yes. Thank you, Madam

18 Chair.

19 This item is a Discussion of Implementation of

20 and the Request for Rulemaking Direction to Formally

21 Notice the 45-Day Comment Period for Amendments to

22 Existing Regulations Regarding Active Disposal Site Gas

23 Monitoring and Control.

24 The item was heard in the Policy Development

25 Committee, and staff presented at that point draft

1 regulations. The Committee directed the staff to make one
2 word change and that has been provided to you. And then
3 bring the item before the Board and at that point
4 discuss --

5 (Thereupon an overhead presentation was
6 presented as follows.)

7 PROGRAM DIRECTOR RAUH: We'll get here
8 presentation going here.

9 Basically, the Committee Chair directed that we
10 come before you today and discuss the following six topics
11 along with the draft regulations.

12 The first -- since we've taken the time to get
13 here -- I think they're self-explanatory. But to
14 highlight them, I'm going to go through each one
15 individually. So if we can go on to the second slide --
16 the third slide.

17 --o0o--

18 PROGRAM DIRECTOR RAUH: The first is the well
19 probe best management practices. And as the Board
20 recalls, in May, you adopted the recommendations from SCS
21 Engineers, which was a report to the Board on gas probe
22 effectiveness. And in those recommendations were some
23 specifics on how they could be designed and constructed in
24 a more effective manner and directed us at that point to
25 go forward with regulatory standards.

1 We suggested at the Policy Committee and are here
2 before you today to take a slightly different path in
3 eventually achieving standards, that path being to
4 establish some best management practices. And those
5 practices would then be immediately available for
6 operators who are currently considering the establishment
7 or the design of construction of new probes.

8 What we have done already is taken the draft --
9 the final recommendation from that report, place them into
10 a best management practice format, and advised LEAs and
11 stakeholders of their location on the Board requesting
12 their comment.

13 We are also putting together a technical advisory
14 group. Would be formed with experts in the context of
15 well and probe design and construction. We're expecting
16 the comments to come back from -- we've requested the
17 comments to come back from technical experts in our
18 stakeholder group by September 1st, with our advisory
19 group then looking at those comments. And then a final
20 document being available toward the end of September,
21 which then would be best management practice for use by
22 operators in terms of putting probes into the ground.

23 So that's our approach for ensuring there is a
24 wide and comprehensive technical assessment and
25 understanding of the probe standards.

1 --o0o--

2 PROGRAM DIRECTOR RAUH: The next item was the
3 monitoring program plan alternative review process. When
4 the Board originally established the standards in this
5 area, there are three areas with which an operator can
6 propose an alternative, whether it has to do with the
7 location of probes, the depth, or spacing.

8 The regulations identified the technical
9 justification that's necessary for an alternative. And
10 based on questions we received, we have subsequently --
11 staff has subsequently released several FAQs which provide
12 additional guidance.

13 But clearly staff continues to meet with
14 operators to discuss the specifics and to help facilitate
15 the broadest possible understanding of the requirements,
16 the staff approach to reviewing the alternative
17 demonstrations. And to actually enhance and provide some
18 specific examples, we're going to proceed with the
19 following manner.

20 --o0o--

21 PROGRAM DIRECTOR RAUH: Basically recalling this
22 business practice review that would result in technical
23 notes and FAQ updates. We've been in contact with other
24 State agency and federal agency registered geologists and
25 engineers who are also responsible for carrying out

1 similar types of reviews to assist us.

2 We are also -- have brought into our review
3 process mines and geology technical note regarding
4 guidelines for review of geologic reports and are putting
5 all this information into what we call our business
6 practices. Those three areas in the previous slide will
7 be addressed in those, and we're proposing to release
8 those for technical review by stakeholders and LEAs by
9 this Friday.

10 Beyond that review, we're planning a webinar or
11 GoTo meeting approach in which the technical experts from
12 operators and LEAs can join with us to review those
13 documents and answer questions, ask questions. And where
14 appropriate we'll obviously add additional information or
15 make changes. So that as a result of that public process
16 which we're expecting will occur around the 8th or at
17 least by the 8th of September, we'll have a broad
18 technical understanding throughout the regulated community
19 of what exactly is required to substantiate and present a
20 plan that is approvable by both the LEA and can be
21 concurred with by the Board.

22 At the point in which plans come in -- as this
23 technical note is formalized, both myself and Bill Orr
24 will be responsible to ensure that it is comprehensive and
25 satisfies everyone's need.

1 --o0o--

2 PROGRAM DIRECTOR RAUH: The next area of concern
3 is the technical review dispute resolution process. As
4 one can expect, there may be circumstances where an
5 operator believes their technical expertise justifies a
6 particular alternative. And our technical experts may
7 disagree.

8 In those instances, I wanted to go through with
9 you quickly our internal review process. First of all,
10 we've created a business practice that has a consistent
11 technical review within your staff. And that's followed
12 by the actual reviews being reviewed by a responsible
13 charge of work individual that's a registered engineer or
14 engineering geologist who is fully capable and trained to
15 understand these things and ensure that the analysis is
16 done correctly.

17 If, in fact, the staff review is ultimately to
18 reject a plan, Bill Orr will review those and ensure that
19 they are correct before signing off. And if, in fact,
20 there is a dispute, it will first come to me. If I can't
21 resolve the dispute satisfactorily, it will go to Mark
22 Leary. And Mark is free, as Executive Director, to
23 consult with third-party experts to make his final
24 determination on the resolution of this technical issue.

25 Again I want to lay out for the Board that

1 largely what we're talking about here would be issues of
2 technical dispute between geologists from the operator and
3 or geologists or engineers from the Board. Or in the case
4 of Mark, perhaps other experts that he might rely on in
5 terms of making a final dispute determination.

6 So that's the proposed dispute resolution process
7 that we wanted to report to you today.

8 --o0o--

9 PROGRAM DIRECTOR RAUH: I wanted to bring us back
10 then to the focused rulemaking. At the Committee meeting,
11 there were certain stakeholders that raised --

12 BOARD MEMBER CHESBRO: Can I you interrupt for a
13 moment and go back a second?

14 PROGRAM DIRECTOR RAUH: Certainly.

15 BOARD MEMBER CHESBRO: This is pretty technical
16 stuff, so it's hard to imagine a citizen or public
17 interest group's interest in appealing. But it seems to
18 me due process wise you can't have the appeal only be in
19 one direction. I think it has to be allowable whether
20 it's a denial or an approval. I think that someone who
21 objects would have objection to the approval ought to have
22 the same rights as the applicant or the operator.

23 PROGRAM DIRECTOR RAUH: Well, the first point of
24 approval actually is at the LEA. And the Board is
25 actually concurring on the plan as opposed -- I've talked

1 about approval. I should have really stated we're
2 concurring with a local decision based on the operator
3 providing the initial --

4 BOARD MEMBER CHESBRO: What is the redress for a
5 party who feels that the approval is inappropriate? What
6 do they do about it? Do they have an avenue?

7 CHIEF COUNSEL BLOCK: Let me jump in here and
8 help unless you --

9 PROGRAM DIRECTOR RAUH: No. Please. I can take
10 any help I can get.

11 CHIEF COUNSEL BLOCK: Just as with any other
12 action that the LEA takes, that it subject to the AB 59
13 appeal process.

14 BOARD MEMBER CHESBRO: Either way, approval or
15 denial?

16 CHIEF COUNSEL BLOCK: Right.

17 What I think Ted has been describing with you is
18 a more informal just get the paperwork reviewed, resolve
19 some disputes to move items forward so these things can be
20 taken care of on the ground rather than building a whole
21 new appeal process. But once that approval happens, it
22 would still be subject to all the usual appeals.

23 BOARD MEMBER CHESBRO: I just wanted to be clear
24 that the due process cuts both ways, and it sounds like
25 that's the case. Thank you.

1 PROGRAM DIRECTOR RAUH: So I wanted to bring the
2 Board back to the actual focused rulemaking that we're
3 proposing.

4 This is for very specific change to these
5 regulations dealing with the ultimate compliance date.
6 And other -- as I was mentioning earlier during the Policy
7 Development Committee hearing, there were stakeholders who
8 brought up other regulatory issues surrounding these
9 regulations. We are recommending that the Board focus
10 this particular effort on this specific issue.

11 And the changes are in Attachment 1 of the item
12 that you have before you.

13 And the one word that we changed with the
14 Committee's direction is on page 1, line 40. And so
15 basically we are suggesting that we stay focused on that
16 and not address any of the other issues. And if the Board
17 wished to, then we feel that should be done in a separate
18 regulatory process.

19 I'd like to move on to the --

20 CHAIRPERSON BROWN: And specifically, Ted, the
21 item you're talking about in the Phase 2 would be
22 reviewing the well depth measurement?

23 PROGRAM DIRECTOR RAUH: That's correct.

24 CHAIRPERSON BROWN: That's one of the only issues
25 that would be -- it's one but could not necessarily be

1 limited to that, which is in slide two of this
2 presentation. I just wanted to clarify. Of your six
3 things, that's the only one that would not fall into this
4 focused rulemaking?

5 PROGRAM DIRECTOR RAUH: That's correct. And we
6 are prepared to discuss that briefly with you today if you
7 would like. But we have some slides on that in the
8 presentation as well. But I just wanted to stay on this
9 one particular focused rulemaking.

10 If we could move to the next slide, please.

11 --o0o--

12 PROGRAM DIRECTOR RAUH: The last item with
13 respect to the focused rulemaking, this was raised by Los
14 Angeles Sanitation District. The issue is the -- whether,
15 in fact, circumstances outside an operator's control
16 should necessitate an extension or ability to extend the
17 ultimate compliance date.

18 And staff had indicated at the Committee that we
19 had thought about this too and had draft language, but it
20 had not been circulated to you or available to the public,
21 so we did not present it there.

22 We believe we have made a proposal today, and I'd
23 like to move on to the next slide.

24 --o0o--

25 PROGRAM DIRECTOR RAUH: This is a comparison of

1 Attachment 2, which is the staff's suggested language and
2 the concept that was expressed by the Los Angeles
3 Sanitation District.

4 And it was at the Committee's request that we
5 provide you with a comparative analysis of the two
6 proposals.

7 With respect to the first area, agencies granting
8 extension, for State consistency, we recommended that it
9 be Board staff as opposed to -- or the Board as opposed to
10 the EAs.

11 With respect to approving program plan as a
12 prerequisite, we believe since the compliance for
13 submittal of the plans is the September date as part of
14 the proposed rulemaking that clearly people need to have
15 approved plans way before we get to the end of the
16 process. So we have said that you need to have an
17 approved program plan as part of the requirements before
18 you can get an extension in the implementation date.

19 In terms of unforeseen circumstance, which was
20 the concept of -- the regulatory concept proposed by L.A.
21 San District, if you drop down two more, we use reasonable
22 beyond control of the operator. We think that's a
23 slightly broader standard and more reasonable in the
24 context of the kinds of problems that an operator might
25 experience.

1 And then we also include the fact that an
2 operator would be required to provide a written
3 justification along with a completion schedule so that the
4 approval could in fact have an end point established as
5 part of this approval to extend the compliance date.

6 And other than that, the remaining concepts are
7 the same.

8 So that is kind of the side by side comparison.

9 As I said, our language is in the Attachment 2.
10 And you'll note it's there twice because we're extending
11 this provision both to the operators that are required to
12 meet this regulatory test by the '09 deadline and then
13 also the small operators that are required to meet the
14 test in '10.

15 --o0o--

16 PROGRAM DIRECTOR RAUH: The final aspect of what
17 we'd like to discuss is the compliance strategy which
18 basically is how this particular set of regulations while
19 they're being adopted, what direction the Board would
20 provide, because people will be out of compliance based on
21 what we understand.

22 So basically what we're suggesting is that you
23 direct staff as EA where the Board is EA. And that, in
24 turn, staff would provide the same kind of direction to
25 the LEAs as follows.

1 If you can flip that slide for me, please. Other
2 way.

3 --o0o--

4 PROGRAM DIRECTOR RAUH: First of all, during the
5 gap period in which the existing regulations are in place
6 and have the 9/21/08 compliance dated, until the
7 regulations are confirmed by the Office of Administrative
8 Law, for those that submitted their plan by the existing
9 compliance date, we would note areas of concern. If a
10 plan is not submitted by the 9-21 date, then either LEAs
11 or ourselves would indicate a violation until that plan
12 were submitted.

13 Post rule making effective date, if a program is
14 not implemented by 9-21-09 or the basic date in the
15 regulations, which is eight months from the date that OAL
16 adopts them, whichever is later, an enforcement agency
17 would note the violation, unless we had notified them an
18 extension had been granted.

19 So that would be the approach we would recommend
20 the Board endorse as part of the implementation if you
21 choose to go forward with this regulatory package.

22 And with that, I'd like to -- I have with me here
23 to answer questions about the specific language and
24 material that I've described here Bob Holmes on my right,
25 who is responsibility for the regulatory package and no

1 stranger to the package and Bill Orr again to take a few
2 more lumps.

3 CHAIRPERSON BROWN: Thank you, Ted.

4 Any specific questions?

5 During the gap period, communication with the EAs
6 or the LEA community regarding plans, submission of plans,
7 and all this kind of stuff, are we going to be sending out
8 some sort of an indication of this gap period and notes of
9 areas of concern versus violations?

10 PROGRAM DIRECTOR RAUH: Absolutely. If you give
11 us the direction to proceed in this way, then we will
12 develop very specific directive to the LEAs. I will be in
13 fact later this week talking to CCDEH. And we have the
14 enforcement round table coming up. We'll have a number of
15 opportunities to make the Board's position on this very
16 clear.

17 CHAIRPERSON BROWN: Which is you will tell
18 them --

19 PROGRAM DIRECTOR RAUH: If you direct us, I will
20 tell them basically what's on this slide.

21 CHAIRPERSON BROWN: Okay. Any questions?

22 We do have a number of speakers. So I can do
23 speakers first.

24 First speaker is Kevin Kondru from Orange County
25 Waste and Recycling.

1 MR. KONDRU: Thank you, Madam Chair. Once again,
2 I'm Kevin Kondru, OC Waste and Recycling.

3 Orange County previously submitted a letter with
4 our comments on the proposed regulations. So that letter
5 will be on record. So what I'm going to say today is just
6 a synopsis. I'm not going to cover everything we included
7 in the letter.

8 So the first item on the best management
9 practices, we do support the items I outlined in the staff
10 report.

11 Also we would be participating as the rulemaking
12 progresses on the item.

13 On the second item, the landfill gas regulations
14 amendment, we do appreciate your efforts as well as staff
15 efforts to amend those regulations to prevent what could
16 be an impending disaster. So we do appreciate that.

17 We also appreciate the time extension. As I
18 previously stated, public agencies such as Orange County,
19 we have to use very formal process to hire consultants as
20 well as to recruit public works contractors. It's a
21 time-consuming process. And, you know, we have to use
22 public works code. So the one-year time extension
23 definitely helps. And I think it will take us a long way.

24 And also I appreciate the wording that on a
25 case-by-case basis for the time extensions will be

1 approved.

2 My only concern with that is that we would like
3 to see the further time extensions that decision making
4 authority be delegated to the EAs rather than coming back
5 to the staff. Because we are now in the extension
6 period -- possibly in the extension period. And then, you
7 know, we have to go to LEA as well as to Waste Management
8 Board that takes further time eating into this extension
9 period. And public agencies like us, we don't want to be
10 receiving any violation notices.

11 So my main concern is with the delegation or lack
12 of it to EAs, because we don't want to lose any precious
13 time beyond that one year period.

14 CHAIRPERSON BROWN: Thank you.

15 Let me remind you, this is a time relief package.
16 These regs actually were submitted to OAL in April of '07.
17 So this is not a one year to implement these regs. This
18 is your second year to implement these regs. So the time
19 extension is beyond the one year that was already agreed
20 to and that OAL approved them as of last September. So we
21 had an entire year.

22 The changes in the regs is to give you an
23 additional year. So jurisdictions and stakeholders will
24 have two years to have implemented these regs.

25 And I think one question I had for Ted is given

1 that we have now prepared the BMPs and are working with
2 the stakeholder group to pull all the information together
3 by the end of September, we've received several packages
4 and plans, and we anticipate more. Within the time frame
5 that we're allotting, is it adequate time to at least
6 submit the plans with a time line for implementation,
7 which is what the time extension proposal is? That you do
8 your plan. You submit with your plan a schedule for
9 completion, and that's how a time extension will be given.
10 There's no open-ended time extension on this proposal.

11 MR. KONDRU: We understand that Orange County did
12 submit the plans to EA. And they are reviewing them. And
13 we will fully comply with the 9-21-08 deadline.

14 CHAIRPERSON BROWN: Let me also mention for
15 everybody I think that we have also -- or the staff has
16 made it pretty clear that you concurrently may submit your
17 plans to the EA and the staff -- the Board staff for
18 concurrent review. So you don't have to wait for EA
19 approval in order to get it to the staff for their review
20 as well.

21 MR. KONDRU: That clarification was provided in
22 June. Up until then, our EAs position was it should be
23 sequential.

24 CHAIRPERSON BROWN: Have you submitted them to
25 the staff since you submitted them to the EA in June?

1 MR. KONDRU: We'll do it as soon as our plans are
2 finalized in a couple of weeks.

3 CHAIRPERSON BROWN: Finalized by Orange County or
4 the EA?

5 MR. KONDRU: By Orange County.

6 CHAIRPERSON BROWN: I thought you said you
7 submitted --

8 MR. KONDRU: Submitted to LEA. They were
9 submitted to have LEA.

10 CHAIRPERSON BROWN: But the direction from staff
11 is that you can concurrently submit them to them as well
12 as for their concurrent review. It's not a sequential
13 review. You can do it concurrently to save time

14 MR. KONDRU: That clarification came in June
15 through fax. So you know --

16 CHAIRPERSON BROWN: And it's August.

17 MR. KONDRU: And here we are, yeah. We did not
18 receive comments from EAs until last month so -- on the
19 plans.

20 CHAIRPERSON BROWN: But you're not listening to
21 what I'm saying. You don't have to wait for EA comments
22 to get that to our staff for concurrent review.

23 MR. KONDRU: I understand that. But --

24 CHAIRPERSON BROWN: It's not like a permit.

25 MR. KONDRU: I cannot submit a plan that LEA is

1 still commenting on the same plan to Waste Management
2 Board staff.

3 CHAIRPERSON BROWN: But we're saying that you
4 can.

5 Ted, can you provide clarification?

6 PROGRAM DIRECTOR RAUH: Yes. Basically, you can
7 submit it to us. And what we have been trying to
8 communicate to operators is that if you do, as long as
9 you've submitted it first to your LEA, you can request
10 them to send it directly to us, the version they're
11 looking at, or you can send it through them to us. And we
12 will work to coordinate a simultaneous review so that
13 perhaps the comments that are coming back reflect both
14 agencies rather than just one so you don't have to go
15 through these step by step approaches.

16 MR. KONDRU: Right. This is the problem I have.
17 The LEA is making comments. The plan is going to be
18 changed based on the comments. And in the mean time, I
19 would have submitted the plan to you. And then if I
20 revised it, you have an outdated plan.

21 PROGRAM DIRECTOR RAUH: That's true.

22 CHAIRPERSON BROWN: But I think the staff has
23 committed to work collaboratively with the LEA.

24 We're trying to make the process easier for
25 stakeholders so you're not lengthening this process.

1 Because we're already into the proposal period for an
2 extension of one year. We're trying to simplify it, and
3 the staff has committed to work collaboratively with the
4 LEA. That's the only reason I asked Ted to clarify that.

5 MR. KONDRU: Well, as far as the time extension,
6 I don't want to get into why we are here. But for a
7 variety of reasons we already discussed with staff and
8 previous meetings, here we are. We need to move forward.

9 And, you know, like I previously stated that the
10 one year is tight for public agencies. We'll do our best
11 to comply with that. But the process -- recruiting
12 process for public works contractors, it takes time. It's
13 beyond my control. Beyond any public agency control.

14 And I recognize the proposed rule accommodates
15 that through the time extension. But my only point is why
16 can't that decision be delegated to the EAs.

17 CHAIRPERSON BROWN: Thank you for your comments.

18 Chris Salomon.

19 MR. SALOMON: Chairwoman Brown, members of the
20 Board, thank you for this opportunity to address you yet
21 again.

22 We really appreciate the Board's consideration of
23 the issues that we've raised with regards to the extension
24 of the provisions regarding the gas regulations.

25 The Sanitation District has reviewed the proposed

1 text, and we appreciate the efforts of the staff to go
2 above and beyond in this case. And we are willing to
3 endorse that to you as well and appreciate the quality of
4 the product they've produced.

5 We do have a minor concern in terms of just
6 making sure that as we move forward with development of
7 these standards for review of the alternatives that we do
8 get those as soon as we practically can so that we can
9 move forward and make sure the plans that are submitted to
10 the Board and Board staff will hopefully comply with what
11 has been incorporated into those guidelines.

12 We do appreciate the fact that the staff is
13 working diligently to reach out and get other technical
14 input to those guidelines as we move forward.

15 Thank you for this opportunity to address you.

16 CHAIRPERSON BROWN: Thank you.

17 I think, Ted, you went through your time line and
18 the staff has committed to working diligently with the
19 advisory group to get those standards developed by the end
20 of September, is your target date or beginning of October?

21 PROGRAM DIRECTOR RAUH: Yes. Actually, we hope
22 to have the business practices out the end of this week.

23 CHAIRPERSON BROWN: But I think it's the
24 standards for alternative plans are of most concern, and
25 we realize that.

1 PROGRAM DIRECTOR RAUH: I use business practices,
2 because the actual standards are in the regs. And so
3 consistent with what you're saying, end of this week out
4 for technical review, the technical meeting with technical
5 experts from San District and others for the early part of
6 September.

7 CHAIRPERSON BROWN: Okay. Thank you very much.
8 I can't see if this is a "D" or "L". Steve Madoski.

9 MR. MADOSKI: Good morning, Madam Chair, members
10 of the Board. I'm Steve Madoski, the integrated solid
11 waste manager at Edwards Air Force Base.

12 And I'd like to thank you for considering the
13 landfill gas regulation amendments.

14 I'd like to submit that the Air Force is a
15 not-for-profit organization and we're funded by federal
16 tax dollars. And with this in mind, we'll make every
17 effort to comply with this requirement in a way that
18 addresses the issue in a socially responsibility manner
19 that's scientifically and environmentally sound.

20 Our programming process involves project
21 submission to our headquarters organization,
22 prioritization, project budgeting, approval processes,
23 contracting phase with required competition, proposal
24 reviews, contractor selection, issue of contract, and then
25 finally we can begin.

1 Every landfill is unique in its own challenges
2 and environment. And we have dry climate, wet climate,
3 canyon fill, remote, landfills located in industrial
4 areas, all with different waste compositions and waste
5 streams.

6 And with this in mind, I would like to request
7 that the Board exercise leniency in considering extensions
8 of the compliance states both for submission and
9 implementation of gas monitoring and control system plans
10 on a case-by-case basis. Thank you.

11 CHAIRPERSON BROWN: Thank you.

12 As long as you get your plan in with your time
13 line, you're in good shape.

14 Chuck White.

15 MR. WHITE: Thanks you, Madam Chair and members
16 of the Board. Chuck White with Waste Management.

17 We're really supportive and very much
18 appreciative of the effort staff has put in, Ted and Bill
19 and others, Bob Holmes and Mark Leary to respond to this
20 situation none of us really realized until just short a
21 short time ago and really the leadership of the Board in
22 helping us respond in correcting it.

23 There was six issues that we had. And I think
24 the plan and program that you've laid out has really
25 addressed all of them.

1 We strongly support moving forward with the
2 focused rulemaking to extend the period of time and with
3 the additional extension framework as proposed by staff.

4 We hope there's clear guidance that there won't
5 be NOV's or orders during this gap period. Waste
6 Management has submitted all twelve of our gas generating
7 landfill plans to the LEAs.

8 Little more clarification on -- we understood
9 previously that the preference of the staff was to
10 submitted the plans to the LEAs and request the LEAs
11 submit a copy to the Waste Board staff so there wouldn't
12 be multiple plans floating out there.

13 I guess what I understand today is that we will
14 try to make that happen through the LEAs. But in the
15 event we feel it's not getting to the Waste Board, then we
16 will send it separately to the Waste Board if the LEAs
17 aren't forwarding it along. So we appreciate that.

18 We appreciate the opportunity to work on the BMPs
19 for the installation of the probes and the opportunity for
20 stakeholder review and comment. And we understand there
21 is a September 2nd deadline for the draft that you put
22 out. We will be responding to that.

23 The third area of concern is the technical
24 guidance on all alternative plans. And that probably is
25 the crux of the whole matter, because that's why we find

1 ourselves today here. Because the norm for most landfills
2 in California is not going to be the prescriptive
3 requirements. It's going to be an alternative plan, and
4 we want to make sure these alternative plans are
5 approvable. So the technical guidance on the
6 approvability of these plans is really key and very much
7 important. And we hope there's a significant time and
8 attention quickly spent on making sure this is put up.

9 As part of that, of course the fifth issue is the
10 issue of a thousand foot and the depth to probes. That
11 can either be addressed through the technical guidance or
12 potentially through a subsequent rulemaking that is
13 separate from the focused rulemaking here. We're happy to
14 work with staff on that process.

15 And then, finally, we hope there is a clear and
16 unambiguous appeal process if we reach loggerheads with
17 the technical staff on the approvability of these
18 alternative plans, that we can quickly get that reviewed
19 by Ted and Mark and ultimately to the Board if necessary,
20 which we hope is not. But we would like to make sure.

21 We're interested in getting the plans in and
22 implemented as quickly as possible. I think the overall
23 program that you laid out here will help us accomplish
24 that. Thank you very much.

25 CHAIRPERSON BROWN: Thank you, Chuck.

1 I think we've clarified the dual submission issue
2 and our commitment on that regard.

3 Our next speaker is Rachel Oster.

4 MR. OSTER: Good afternoon, Chair Brown, members
5 of the Board. Rachel Oster with Norcal Waste.

6 Definitely appreciate and support staff's
7 recommendations on rulemaking, especially the extension of
8 the compliance deadline and the alternative enforcement
9 strategy.

10 We also appreciate the opportunity for
11 stakeholder involvement in the development of the BMPs and
12 technical notes where several issues, such as the well
13 depth standard, can be vetted by technical advisory group.
14 We feel that technical notes will be helpful in
15 determining what type of alternatives will be acceptable
16 by LEAs and Board staff.

17 Thank you.

18 CHAIRPERSON BROWN: Thank you.

19 Our next speaker is Larry Sweetser.

20 MR. SWEETSER: Good afternoon, Chair Brown, Board
21 members. Larry Sweetser on behalf of the Rural Counties
22 Environmental Services Joint Powers Authority.

23 We are in support of the staff recommendation.
24 We do appreciate the Board's flexibility and all the
25 staff's work in this effort.

1 And if we all knew then what we know now, I think
2 we would be in a lot different place. I think there's
3 ways we can avoid that in future.

4 But our biggest concern is the potential for
5 yo-yoing these plans back and forth between the operators,
6 consultants, the LEAs and Board staff. And we already are
7 planning on implementing the suggestion that Chair Brown
8 made in concurrent submittals and also concurrent
9 discussions before the submittal to make sure the we get
10 the plans right in the first place. Because there's been
11 so much misinformation on what is and isn't acceptable
12 that a number of our counties, even their consultants, are
13 confused by every time they talk to someone.

14 So we do urge the Board to go ahead with this
15 package. And we do offer to volunteer our services and
16 any of the work groups -- I'm not a technical person on
17 landfill gas, but I have been spending a lot of effort
18 coordinating with our counties and consultants. And we do
19 have a number of landfills impacted by this program. So
20 Ted can mark us down as a volunteer.

21 And we appreciate his appearing in front of our
22 group on Thursday. We expect a very productive discussion
23 on what isn't and is acceptable and allowed.

24 CHAIRPERSON BROWN: Thank you.

25 I think, Ted, you're encouraging consultants and

1 technical people to attend Thursday to ensure that we have
2 them as participants in the discussion?

3 PROGRAM DIRECTOR RAUH: That's certainly who we
4 would like there, yes. And, of course, as we go on to our
5 own webinar, there will be an opportunity for as many
6 technical folks involved in these issues as there are to
7 participate in that as well.

8 CHAIRPERSON BROWN: That would be great. Thank
9 you.

10 Our next speaker is Chuck Helget.

11 MR. HELGET: Madam Chair, members of the Board,
12 Chuck Helget representing Allied Waste.

13 This has been an interesting process to say the
14 least. I think I can generally say while not everyone got
15 everything they wanted in the process, we certainly ended
16 up with a regulatory package that is an improvement to
17 what's being proposed to you, one that's workable and one
18 that will ensure that the landfill gas monitoring
19 standards are kept strong in the state.

20 Allied has a variety of landfills in this, and I
21 think we're typical of all some of the larger companies.
22 We have landfills on the coastline. We have landfills in
23 the desert. We have canyon fill landfills. We have
24 aerial fill landfills. We have landfills that have
25 varying depths to water and groundwater. And so each of

1 these plans that we are working on are unique in many ways
2 and not necessarily at this point easily prepared. We're
3 having hydrologists review these plans now. We're going
4 through their geologists and doing everything we can to
5 make sure that our plans are -- if they are being proposed
6 as an alternative are being substantiated and properly
7 documented.

8 With that, we will have all of our plans
9 submitted well in advance of the deadline. So we can work
10 within that time frame certainly.

11 A couple of issues that I think I would like to
12 just discuss first of all. We certainly support the
13 regulatory package that's in front of you today. We
14 support the extended time lines. We support the
15 compliance -- alternative compliance procedure that's
16 being proposed by staff, not only on facilities where you
17 are the EA, but the other EAs where we focus on areas of
18 concern rather than building up Notices of Violation. And
19 also we support the language that's being proposed to
20 extend the deadline where there's good faith effort and
21 unintended circumstances.

22 With regard to the issue of standards for
23 approval alternative plans, as I understand it, we're
24 going to be vetting those standard in a webinar or in an
25 open discussion before we start developing those. And I

1 think that's important. Because leading back to my
2 original point about the variety of landfills, I think
3 it's very important as we develop these standards for
4 Board staff, LEAs, operators, to discuss the different
5 options that are out there. I think it will help us learn
6 from each other what the possible -- what types of support
7 will be necessary for us to get approval of alternative
8 plans. And the way to do that is up front, and I think in
9 a very open dialogue. So we very much support that moving
10 forward.

11 And again, support for the package. Urge the
12 Board to support the package. And if there's any
13 questions.

14 CHAIRPERSON BROWN: Thank you.

15 George Eowan.

16 MR. EOWAN: Thank you, Madam Chair, Board
17 members. George Eowan representing L&D Landfill.

18 And we also support -- just pretty much me too on
19 everything everybody said.

20 I just have one question. It's on this slide, on
21 the area of concern. If we're in the gap period and this
22 is taking several months and the LEA goes and performs the
23 monthly inspection, and the landfill has met that
24 requirement that they've submitted in 9-21-08. So month
25 one goes through. They get an inspection and they get an

1 area of concern. Month two, they get an area of concern.
2 Month three, they get an of concern. Does that
3 automatically kick into a Notice of Violation?

4 PROGRAM DIRECTOR RAUH: No. I think our guidance
5 will be that they would -- they will get areas of concern
6 until the trigger that's listed.

7 MR. EOWAN: So the normal trigger won't be in
8 effect. This will be a separate --

9 PROGRAM DIRECTOR RAUH: That's correct. And our
10 intention is that, if you think about it, the regs should
11 be in place before we reach that point. We are shooting
12 for a January time frame. And so if the first inspection
13 were to occur in late September, I guess you could have
14 the third one by that time. But in most instances
15 wouldn't have had the first inspection perhaps until
16 November, which would carry three through January time
17 frame.

18 MR. EOWAN: So there will be a guidance or
19 something that --

20 PROGRAM DIRECTOR RAUH: Yes. As I said we will
21 send a clarifying letter.

22 MR. EOWAN: Thank you.

23 CHAIRPERSON BROWN: Any questions from Board
24 members?

25 Can I have a motion on the resolution as revised?

1 CHIEF COUNSEL BLOCK: Madam Chair, this is a
2 direction.

3 CHAIRPERSON BROWN: No wonder I can't find a
4 resolution number.

5 BOARD MEMBER PEACE: I want to thank staff. I
6 think they did an excellent job on this in addressing all
7 the stakeholders' concerns and coming up with something
8 everybody can agree on. I thank you for the good work.

9 CHAIRPERSON BROWN: Thank you. Bob, thank you
10 very much. Ted, Bill, appreciate all your hard work on
11 getting us to this point. The attachment for the time
12 extension is good.

13 PROGRAM DIRECTOR RAUH: That would be Attachment
14 1 and 2.

15 CHAIRPERSON BROWN: Attachments are good. Go
16 forward. And then we will discuss at a future time the
17 second page or part two of the rulemaking.

18 PROGRAM DIRECTOR RAUH: Thank you.

19 CHAIRPERSON BROWN: We will move next to Item 12
20 revised. Mindy.

21 ASSISTANT DIRECTOR FOX: Good morning, Madam
22 Chair and Board members. For the record, I'm Mindy Fox,
23 Assistant Director of the Office of Education and the
24 Environment. And I'm here to present Item 12,
25 Consideration of Contractor for the Education and the

1 Environment Initiative Principle Consultant Contract.

2 As the item states, the Board awarded a contract
3 for the EEI principle consultant back in 2005, but the
4 project has been far more intensive, both in terms of
5 money and the time than originally anticipated. So we
6 need to award a new contract to provide additional time
7 and resources to complete the EEI curriculum project.
8 That's what this item will do.

9 The proposed contractor, the State Education and
10 Environment Roundtable, also known as SEER, is headed by
11 Dr. Gerald Lieberman who has been our current contractor.
12 And it has currently been selected by the competitive
13 request for proposal process with the maximum contract
14 amount of \$1,280,000.

15 This contract will be funded with BCP dollars as
16 long as they say in tact in the current Governor's budget
17 from the Department of Conservation and a contribution
18 from the State Water Resources Control Board and dollars
19 out of the Environmental Education account, which is
20 housed at Cal/EPA.

21 We have been on the fast track to complete the
22 development of the curriculum. All of the curriculum
23 units that we intend to produce are currently in
24 production right now anywhere from the initial drafting
25 and writing of the unit all the way through printing and

1 bill testing. We have released 15 units for field
2 testing. We have 20 more that we had queued up to release
3 September, October. Some of them are actually on hold due
4 to the Executive Order and the ceasing of printing,
5 writers, editors, and such.

6 We will assess the impact of that Executive Order
7 as soon as it's released and make adjustments to our
8 schedule if we need to do so.

9 The remaining 50 curriculum units are with
10 writers and editors. And those are the ones that really
11 are probably going to slow is down just a bit. And we'll
12 adjust time lines.

13 While I have the opportunity, I'd like to take
14 another 60 seconds just to give you a couple more updates.
15 And it's all good news.

16 Heal the Bay was successful in securing the
17 Packard Foundation grant for \$265,000, and we are on the
18 verge of hiring Eric Douglas of LRI to be our strategic
19 planner. He's hope he's signing that contract this week.
20 And we'll have the first planning meeting next week.
21 There's been a little bit of dialogue with the contract
22 deliverables, and such and everybody is working through
23 that.

24 Simultaneously, the Department of Education has
25 put out there review application and are screening all

1 those applications right now to be on the independent
2 panel review teams, and they will take their selection to
3 the Curriculum Commission next month. So we continue very
4 successful dialogue and plan with CDE about the review and
5 deliberations of the curriculum and are making great
6 headway on that front.

7 And I'm most happy to report our efforts to
8 diversify EEI funding have been very successful.

9 The Air Resources Board just made a contribution
10 of 62,500 from a settlement that took about nine months to
11 get settled and then said headed our way.

12 The Water Board in June very generously continued
13 one million dollars over a four-year period, and all of
14 the funds will go to contracts to complete the curriculum
15 development.

16 OEHHA, who we all know is not rolling in the
17 money, actually found 100,000 at the end of the fiscal
18 year. And those funds have been earmarked for Sac State
19 to continue the graphic production.

20 With these contributions from Cal/EPA, that means
21 DTSC, OEHHA, Water Board, and the Waste Board have all
22 provided financial support to EEI now. That is great
23 news.

24 And we have been alerted OEE submitted a grant to
25 U.S. EPA several months ago that they're putting up with

1 the end of their fiscal year efforts. As soon as they're
2 through that, we'll get the green light. We've been
3 awarded a grant of \$103,000. We've been warned we should
4 be ready to start, though we haven't had the formal award
5 letter. And those funds will be devoted to kicking off
6 our professional development effort.

7 And we just put out a survey to several dozen
8 professional development experts across the state. We'll
9 get the survey results back, and that will help put that
10 team together to then implement the grant. And that's
11 really great news.

12 And the whole goal of that is to ensure that the
13 curriculum will actually be used in the districts in the
14 schools across the state when it's done.

15 And the BCP still appears to be intact in the
16 Governor's budget. We all know I can't make any promises.
17 But if it stays intact, it will provide \$1,167,000 for
18 this fiscal year and 916,000 the following fiscal year.
19 And we'll use all those funds for a variety of contracts
20 including the one that we hope you'll approve the award of
21 today.

22 So that means if the U.S. EPA grant is awarded
23 and our BCP stays intact, we have fund-raised
24 three-and-a-half million dollars outside of Waste Board
25 funds. That's a dramatic improvement over a year ago.

1 And we hope it's the catalyst to do a lot more of that.

2 And we'll hopefully be seeking both corporate and
3 nonprofit and foundation funds for the big ask down the
4 road about printing and dissemination.

5 So in sum, this is all really good news in light
6 of us stopping work on 45 folks crutching out the
7 curriculum. In the big picture, there's great progress
8 being made. And if you approve the award of this contract
9 today, we'll continue on that front.

10 So I request that you adopt Resolution Number
11 2008-140 and award this contract to SEER.

12 That's it. Any questions?

13 CHAIRPERSON BROWN: Thank you, Mindy.

14 Excellent work. It's nice to see everybody else
15 stepping up behind us. Behind us.

16 BOARD MEMBER CHESBRO: I'm very excited, but I do
17 have a question. Can you just describe for the sake of
18 the record here how many proposals there were. What level
19 have competition if any. Were they the only ones --

20 ASSISTANT DIRECTOR FOX: They were the only one
21 that submitted a proposal. And that was not a huge
22 surprise. We had a lot of conversations internally that
23 we did not expect a lot of competitors to want to come in
24 and finish the job that Dr. Gerald Lieberman already
25 started. And we were hoping actually -- we did quite a

1 bit of outreach to a lot of educational --

2 BOARD MEMBER CHESBRO: That was my second
3 question to what degree --

4 ASSISTANT DIRECTOR FOX: We did definitely did
5 outreach including UC Berkeley, FOSS, the makers of
6 science kits and such, but nobody bid.

7 BOARD MEMBER CHESBRO: Thank you.

8 CHAIRPERSON BROWN: Thank you, Mindy.

9 BOARD MEMBER PEACE: I just wanted to say this
10 was such a huge undertaking. I was here from the
11 beginning. And what Mindy and her staff have been able to
12 accomplish from the curriculum development and units being
13 tested out in the field, to securing the additional funds
14 in such a relatively short amount of time and really is
15 just mind boggling.

16 And I was just so happy to see actually that
17 Jerry Lieberman wanted to continue doing this, because I
18 know he's just been working I think 24/7 trying to get all
19 this stuff done. So I was really excited to see he even
20 wanted to do this.

21 If there aren't any other questions, I'd like to
22 move the resolution.

23 CHAIRPERSON BROWN: Any other questions?

24 BOARD MEMBER PETERSEN: Great job. This is
25 awesome. This is grand.

1 BOARD MEMBER MULÉ: Second.

2 CHAIRPERSON BROWN: It's been moved by Member
3 Peace, seconded by Member Mulé.

4 Kristen, can you call the roll?

5 EXECUTIVE ASSISTANT GARNER: Chesbro?

6 BOARD MEMBER CHESBRO: Aye.

7 EXECUTIVE ASSISTANT GARNER: Mulé?

8 BOARD MEMBER MULÉ: Aye.

9 EXECUTIVE ASSISTANT GARNER: Peace?

10 BOARD MEMBER PEACE: Aye.

11 EXECUTIVE ASSISTANT GARNER: Petersen?

12 BOARD MEMBER PETERSEN: Aye.

13 EXECUTIVE ASSISTANT GARNER: Brown?

14 CHAIRPERSON BROWN: Aye.

15 The resolution passes. Mindy, congratulations.

16 Continue the great work, hard work. And we'll look
17 forward to our next update.

18 ASSISTANT DIRECTOR FOX: Thank you, everybody,
19 for your kind words and support.

20 CHAIRPERSON BROWN: We'll move to Item 14.
21 Howard.

22 PROGRAM DIRECTOR LEVENSON: Thank you, Madam
23 Chair. Howard Levenson with the Sustainability Program.

24 And Item 14, our last item of the day, concerns
25 the applicant eligibility and project eligibility for the

1 TDP grant process.

2 As you know, we had a very good discussion with
3 the Committee last week, and there were a number of issues
4 raised. And in order to try to keep on our time frame of
5 getting the notices out in early October, we thought we
6 would take a stab last week at trying to address those
7 issues. And that's the subject of the revised item that
8 you received Friday.

9 So Marissa Luna who made the presentation is
10 going to quickly walk you through what staff is proposing
11 to make sure it's clear and what our thresholds are and
12 our reasoning. And then we'll make our recommendation
13 regarding this item.

14 (Thereupon an overhead presentation was
15 presented as follows.)

16 MS. LUNA: Thank you, Howard. Good afternoon,
17 Chair Brown and Board members. I'm Marissa Luna from the
18 Financial Assistance Division.

19 --o0o--

20 MS. LUNA: The following is a list of recommended
21 changes to the previously presented item.

- 22 1. Divide school districts into two categories.
- 23 2. Increase the maximum award amount for large
24 school districts from \$250,000.
- 25 3. Remove the two-fiscal-year restriction to

1 allow applicants to apply every year.

2 --o0o--

3 MS. LUNA: To assist school districts that
4 represent a large portion of California's student
5 population, staff is recommending that school districts be
6 divided into two categories.

7 For fiscal year 2008-09, staff proposes that
8 school districts with 43,000 students or greater be
9 eligible for an increased award amount of \$250,000. This
10 represents 25 percent of California's student population.

11 The threshold for fiscal year 2009-10 would
12 remain to those districts that represent 25 percent. But
13 because the number of students in this category will
14 change from year to year, the exact determination of this
15 figure will be determined next year.

16 To find the school districts' enrollment rate,
17 applicants and staff will use the California Department of
18 Education database, Quick Quest. Instructions on how to
19 search this database will be in the application guidelines
20 and instructions.

21 --o0o--

22 MS. LUNA: This slide shows the 15 school
23 districts that would be considered a large school district
24 for this year.

25 --o0o--

1 MS. LUNA: Staff recommends requiring individual
2 schools to apply through their school districts as in past
3 cycles. Since the program has twelve other eligible
4 applicant types, staff feels that allowing individual
5 schools to apply could result in hundreds of applications.

6 In addition, since each application can contain
7 multiple projects and an eligible applicant will be
8 allowed to apply every year, staff does not feel it is
9 necessary to allow each school to apply.

10 Although staff recognizes all the hard work
11 foundations, parent groups, and PTAs contributes to school
12 projects, staff recommends that they remain an ineligible
13 applicant. They are several contractual and agreement
14 issues that may occur when making these entities an
15 eligible applicant for CIWMB legal office.

16 Therefore, staff recommends Option 1, adoption of
17 Resolution 2008-135 revised. Thank you.

18 CHAIRPERSON BROWN: Very good. That was your
19 second presentation now. Great job.

20 Do we have any questions?

21 BOARD MEMBER CHESBRO: Madam Chair, I appreciate
22 the approach to trying to solve as many of the problems
23 that came up in the last discussion as you have made.

24 The one question that remains, of course, is if
25 we have a greater degree of oversubscription and wind up

1 with funding shortfall. So I don't think we can direct
2 more funding today. But I think whatever the process is
3 for the Board to try to make sure that if there is an
4 increased demand as a result of increasing the amounts for
5 the larger school districts that we are prepared to meet
6 that and not have it be at the expense of smaller
7 districts. So that would be the only point I would make.

8 CHAIRPERSON BROWN: I think we discussed it
9 briefly at Committee. We've been able to in the last
10 couple of years through reallocation and still had
11 additional funds available for other projects. But as a
12 result of our report to the Legislature earlier this year,
13 we've recommended additional funding to this program for
14 the next fiscal year and the next Five-Year Tire Plan.

15 BOARD MEMBER CHESBRO: That's the report to the
16 Legislature. Where are we in terms of putting that
17 additional money in the pot?

18 CHAIRPERSON BROWN: It's in the budget process.

19 PROGRAM DIRECTOR LEVENSON: Correct.

20 BOARD MEMBER CHESBRO: In the Five-Year Plan
21 update?

22 PROGRAM DIRECTOR LEVENSON: Correct.

23 BOARD MEMBER CHESBRO: Thank you.

24 CHAIRPERSON BROWN: You want to hang around for
25 revisions to the next Five-Year Tire Plan?

1 BOARD MEMBER CHESBRO: Sure.

2 CHAIRPERSON BROWN: It was such a wonderful
3 process. I enjoyed it tremendously, and I think we should
4 make sure that you can participate.

5 Any other questions?

6 BOARD MEMBER PEACE: I appreciate staff trying to
7 take some of my concerns into consideration.

8 But I do have to say I'm very disappointed in the
9 recommended changes, because I still believe that every
10 school child in California should have an equal chance to
11 benefit from the improved track or field or playground
12 that our grants can provide.

13 So why should a student in a large school
14 district, like Los Angeles or San Diego, have less of a
15 chance of benefiting from these grants than a student in a
16 small school district?

17 That is why I felt strongly that every school
18 should be able to apply. Like just say, for example, a
19 school district that may only have one or two high
20 schools, they can now apply for \$150,000. But like L.A.
21 Unified School District has 60-plus high schools with 20
22 more to be opened in the next couple of years.

23 So I know you changed it. But someone like L.A.
24 not only has more schools per district, but they are more
25 likely to have more students per school that would

1 actually benefit.

2 So under the proposed criteria, they would
3 qualify for \$250,000. So a district that has 60 times
4 more schools gets 100,000 more dollars. I feel that that
5 is not anywhere, like, near equal treatment.

6 So, you know, in order to be a more equitable
7 grant program with the limited amount of funds that we
8 have, I still believe that eligible applicants should
9 include individual schools. You know, could be as well as
10 school districts, but individual schools should be allowed
11 to apply.

12 And because the grant program is so
13 oversubscribed even at \$100,000 a grant, I think we should
14 leave the maximum grant amount at \$100,000. Multiple
15 projects would still be okay. But you got to remember we
16 are very oversubscribed.

17 And, again, because the grant program is so very
18 much oversubscribed, I think you should limit the number
19 of grants that any one entity can receive to only, like,
20 one grant per site. Instead of being able to apply every
21 year, if a park wanted to apply for one thing and the next
22 year to apply for the same thing at the same site. I
23 think we should actually spread our money around for the
24 purpose.

25 The grants is to have market development and

1 stimulate the market. We should make sure that the grants
2 go to different sites. And to address the possible, you
3 know, over workload concern, I still don't understand why
4 we just can't assign the applications a number as they
5 come in, have the lottery, and then just evaluate and
6 score the grants for up to the amount of money that we
7 have.

8 CHAIRPERSON BROWN: I think that I'll address the
9 last question.

10 I think Wes had a comment.

11 They addressed that last issue at the last
12 meeting. They have to determine eligibility before they
13 can go through the lottery. So we have to determine if
14 the application is even eligible.

15 BOARD MEMBER PEACE: If they do the lottery and
16 they're not eligible --

17 CHAIRPERSON BROWN: But they're going to have to
18 do the same amount of work.

19 BOARD MEMBER PEACE: Well, you say this --

20 CHAIRPERSON BROWN: It's not saving any time or
21 any work I don't think.

22 BOARD MEMBER PEACE: Yeah, it would. It would
23 save a significant amount. Because you're not going to
24 have to score them all. You score how much for how much
25 money we had and then maybe a few extra for those that

1 didn't qualify for some reason. If you look at how

2 many --

3 CHAIRPERSON BROWN: We've actually -- okay. I'll

4 wait.

5 BOARD MEMBER PEACE: The chart shows how many,

6 like 84 --

7 CHAIRPERSON BROWN: We funded every single grant

8 though. So in the last several cycles, I can't remember

9 since I've been here -- and this is my third cycle -- that

10 we've ever not funded a grant. So we're going to go

11 through them all anyway, and we're going to review them

12 for eligibility. So by not reviewing them first and

13 waiting until we do the lottery, it's just, you know,

14 turning the process backwards, in essence.

15 BOARD MEMBER PEACE: Like they were saying, if we

16 got 200 applications, you wouldn't have to score them all.

17 Even with reallocation, you're not going to have that

18 much.

19 PROGRAM DIRECTOR LEVENSON: It's our view we

20 would have to review them to determine eligibility so

21 there is a fair random selection in the lottery. And then

22 we would still have to come back later in the reallocation

23 item.

24 So I think that this would be a real increase in

25 workload for staff to pursue that particular pathway.

1 BOARD MEMBER CHESBRO: Madam Chair, one other
2 point I wanted to make in response to Board Member Peace
3 is if you look at the grant list for 07-08, the largest
4 grant is 99,000. And if you average them out -- I could
5 be off here. But I would guess it's the average is
6 somewhere in the neighborhood of maybe 60,000 or something
7 like that.

8 So I actually think there's not as great a
9 discrepancy as it might appear in terms of the differences
10 between sizes.

11 And the danger we get into -- and I brought this
12 up last time -- is it's immensely complex and we could
13 spend a huge amount of resources trying to figure out how
14 to make it absolutely responsive to the number of students
15 and have the criteria be based on the number of students.
16 We'd have to have a formula that the Legislature spends
17 every year beating the you know what out of each other
18 trying to figure out and dozens of different issues. It's
19 just trying to figure out how to be fair.

20 The Chair so kindly pointed out my tenure may be
21 limit around here. But if I were going to be around here
22 long enough and we were approached by the larger districts
23 in the state to engage in a process. If they were really
24 concerned and wanted us to try to figure out more than
25 we've done here, I would be open to it. But I don't think

1 we've heard that they're real unhappy with the process.
2 They're probably pleased we're making more available. And
3 I would encourage the Board in the future, those of you
4 that will be here -- and maybe I will be too. Who knows.
5 To keep an open mind about it.

6 Because but I do think the further you get into
7 it, the more staff intensive, the more complicated trying
8 to figure out a perfect formula becomes. So rounding it
9 off and keeping it general and trying to not be completely
10 out of balance. And I think we're responding positively
11 to what we heard last meeting, which was that maybe we're
12 unduly limiting the larger districts.

13 So I support the staff's recommendation.

14 BOARD MEMBER PETERSEN: Madam Chair, I also
15 concur with the Senator.

16 First, I want to thank the staff for turning this
17 around so fast from our Committee meeting and helping us
18 get through this. And I enjoyed the conversations during
19 the Committee meeting. It was great. We got a lot of
20 ideas out on the table.

21 I would like to move Resolution 2008-135 revised.

22 BOARD MEMBER MULÉ: Second.

23 CHAIRPERSON BROWN: Okay. It's been moved by
24 Member Petersen, seconded by Member Mulé.

25 Kristen, can you call the roll?

1 EXECUTIVE ASSISTANT GARNER: Chesbro?
2 BOARD MEMBER CHESBRO: Aye.
3 EXECUTIVE ASSISTANT GARNER: Mulé?
4 BOARD MEMBER MULÉ: Aye.
5 EXECUTIVE ASSISTANT GARNER: Peace?
6 BOARD MEMBER PEACE: No.
7 EXECUTIVE ASSISTANT GARNER: Petersen?
8 BOARD MEMBER PETERSEN: Aye.
9 EXECUTIVE ASSISTANT GARNER: Brown?
10 CHAIRPERSON BROWN: Aye.
11 The resolution passes.
12 And I believe that is it for regular Board
13 business. Do we have anything else I'm missing?
14 CHIEF COUNSEL BLOCK: We do have a closed
15 session.
16 CHAIRPERSON BROWN: Now we go into closed
17 session. So we did move into closed session. Thank you
18 all.
19 (Thereupon the California Integrated Waste
20 Management Board recessed into closed session
21 at 12:32 p.m.)
22 (Thereupon the California Integrated Waste
23 Management Board adjourned closed session
24 at 12:55 p.m.)
25

1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 24th day of August, 2008.

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22 TIFFANY C. KRAFT, CSR, RPR

23 Certified Shorthand Reporter

24 License No. 12277

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